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UNITED STATES  
DEPARTMENT OF JUSTICE

Canada 934  
RESTRICTIVE TRADE PRACTICES COMMISSION

LOSS-LEADER SELLING

TRANSCRIPT OF EVIDENCE

Vol. 10-14

MONTREAL

JUN 9 1954



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RESTRICTIVE TRADE PRACTICES COMMISSION

IN THE MATTER OF

an inquiry

Regarding Loss-Leader Selling

Hearing held (in public) in Hearing Room

No. 2, New Court House Building, Montreal, Wednesday, June 9th, 1954.

PRESENT:

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.,  
Chairman  
Guy Favreau, Q.C., B.A., LL.B.,  
Member  
A. S. Whiteley, B.A., M.A.,  
Member

APPEARANCE:

Mr. Paul Gerin-Lajoie - Counsel for the Commission

REPRESENTATIONS:

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Allied Beauty Equipment Manufacturers' & Jobbers' Association	1663
Represented by:	
Mr. Corlett, of Ottawa, Counsel for the Association.	
Mr. H. Margo, of Montreal, Manufacturer.	
Mr. R. E. Goslett, Montreal, Jobber.	
The Canadian Association of Consumers	1730
Represented by:	
Mrs. H. E. Vautelet, C.B.E., National President, Canadian Association of Consumers.	
Mrs. V.W.G. Wilson, Provincial President, Canadian Association of Consumers, Quebec (English Branch).	
Mrs. Grabeau, Provincial President, Canadian Association of Consumers, Ontario.	





MONTREAL,JUNE 9th, 1954Delegation from:ALLIED BEAUTY EQUIPMENT  
MANUFACTURERS' & JOBBERS'  
ASSOCIATION.Represented by:Mr. Corlett, of Ottawa,  
Counsel for the Association.Mr. H. Margo, of Montreal,  
ManufacturerMr. R. E. Goslett, Montreal,  
Jobber.

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---On resuming at 2 00 p.m.

THE CHAIRMAN: The hearing will come to order. The first presentation this afternoon is on behalf of the Allied Beauty Equipment Manufacturers' and Jobbers' Association. Are you appearing on behalf of them?

MR. CORLETT: Yes, Mr. Chairman. My name is Corlett and I am a Barrister in Ottawa.

THE CHAIRMAN: You are appearing as counsel for them?

MR. CORLETT: I am appearing as counsel, and I have with me Mr. H. Margo, of Montreal, who is a manufacturer in this particular business, and Mr. R. E. Goslett, and he is a jobber in this particular trade.

THE CHAIRMAN: Mr. Margo, you are a manufacturer?

MR. MARGO: Yes, I am President of the firm





Chemaco Limited.

THE CHAIRMAN: And Mr. Goslett?

MR. CORLETT: He is a joober.

THE CHAIRMAN: Also of Montreal?

MR. CORLETT: Of Montreal, yes. I thought.

M. Chairman, it would be wise to have a representative from each sector of this industry in case questions of a technical nature were raised, because in answering such questions it would certainly be beyond my competence, and I have a manufacturer and a dealer who I think will be quite able to give the Commission any aid it desires.

Mr. Chairman, we have filed as required a number of copies of our brief, and that was done in Ottawa last Friday. I don't know what the procedure is.

THE CHAIRMAN: The procedure we have been following is for the person in charge of the brief to read it and make any comments he likes. He can make those comments in the course of reading if he thinks that is a good place to do it, or at the end. Or, he may do a combination of both. Then, we follow that by allowing any other member or members of the delegation who wish to add anything to the brief to do so, and then there is a question and discussion period.

MR. CORLETT: Well, would it be in order for me to read the brief?

THE CHAIRMAN: Yes.





MR. CORLETT: "The Allied Beauty Equipment Manufacturers' and Jobbers' Association wishes to express its appreciation to this Commission for extending to it the privilege of presenting its views on this question of Loss Leader Selling.

"This Association is the recognized trade association of manufacturers and jobbers in Canada of beauty supply products which are sold to approximately 7,000 operators of hairdressing establishments and 9,000 barber shops throughout Canada. The Association presently has a membership of 109 firms of which 54 firms are manufacturers of beauty supply products and 55 firms are jobbers engaged in the distribution of these beauty supply products. These 109 firms represent at least 80% of the manufacturers and jobbers in this line of business in Canada.

"In the beauty and barber supply industry, the products manufacturers are usually known to the trade as professional products since they are used by beauticians and barbers in performing a service to their customers or patrons. The manufacturer sells his particular professional products to a jobber who, in turn, distributes such professional products amongst the hairdressing and barber establishments





throughout Canada. These professional products are not sold over the counter to the public by ordinary retailers and only incidentally to the public by hairdressing and barber shops."

If I may interject there, one difficulty this Association has always had with Government officials, both at Federal and Provincial level, is that the Government officials almost unconsciously think of this group as being part of another trade association known as the Toilet Goods Manufacturers' Association. The members of the latter Association, their products eventually appear on the retail counters of drug stores, but this group do not touch the drug stores or that phase of the retail level. Their sales are to beauty parlours and barbers shops alone. In fact, the professional sizes of the products would not be suitable for sale to the public.

THE CHAIRMAN: Does that apply to the manufacturers in toto, or only to these particular products?

MR. CORLETT: I think almost entirely: You have a separate group of manufacturers catering to this beauty supply trade, separate and distinct from the manufacturers whose products appear in drug stores.

THE CHAIRMAN: I thought there may be a number of products which would appear in retail stores in smaller size packages or bottles, probably



made by the same manufacturers. Is that only a small part?

MR. MARGO: Yes, but that is one different part, and manufacturers who do this have different departments for those things.

MR. FAVREAU: It may be the same manufacturer, but they are two separate things.

MR. CORLETT: "In other words, these professional products are purchased by beauticians and barbers in order that they might perform the necessary services which they render to the public and as a rule are sold in professional sizes only. Consequently, the manufacture and sale of beauty supply products are somewhat different from the manufacture and sale of ordinary articles of trade. In the beauty supply industry these products are manufactured, and then disposed of by jobbers to operators of hair-dressing establishments and barber shops who, in turn, use these professional products in performing their functions as a service trade."

There are really two problems in our brief: The problem to the manufacturer of these products; and secondly, and perhaps more serious, the problems presented to the jobbers. The operators of the hairdressing establishments are quite secure, for reasons which will become apparent as I proceed.





"The majority of jobbers who sell supplies to Beauty Salons in Canada are exposed to ruinous financial set-backs caused by price cutting and loss-leader practices.

- (a) As indicated there are about 7,000 Beauty Parlors with 20,000 to 25,000 employees in Canada. Beauty Parlors are in a much stronger financial position in 1954 than before the last War. One of the main reasons is that their number is much lower in proportion to the population than in the United States or in European Countries. In the United States for example, there are about 120,000 Beauty Salons - that means about one for every 1,300 inhabitants, and in England and West Germany about 45,000 Beauty Parlors in each country which lowers this proportion even more. By comparison, each one of the 7,000 Canadian Beauty Parlors can serve 2,100 inhabitants. It is therefore obvious that the Canadian Beauty Parlors can concentrate much more business within their shops because of their smaller number than salons elsewhere. Women furthermore are much more hair conscious and for working-girls hair-care is a necessity.



(c) From a survey of 88 Jobbing Organizations there are . . ."

I may interject again and state this information is obtained by the manufacturers of beauty supply products. That is the source of the information.

THE CHAIRMAN: I don't want to interrupt the chain of your reading, but there is one little question. On page 1 you refer to 55 firms of jobbers in Canada, and now you speak of 88 jobbing organizations.

MR. CORLETT: Well, the excess number over and above the 54 or 55 are not members of the Association, but actually I think they are smaller jobbing organizations.

MR. MARGO: That is right.

THE CHAIRMAN: On page 1 you say the 55 and 54 represent at least 80% of the manufacturers; Do you mean of what is manufactured, or of the manufacturing concerns?

MR. MARGO: In this 88 number there are quite a few very small jobbers -- one-man outfits -- and this is all outlined in this brief, who could not afford to be members of the Association, and their business is fairly small, but they give quite a lot of service to lots of beauty parlours.

THE CHAIRMAN: The 55 firms is hardly 80%, then, if you have 33 more?

MR. CORLETT: In citing the 80% figure -- and this was checked because I don't want to





mislead the Commission -- this was checked, and having in mind the volume of business done and the position of the firms in the trade, the member firms of the Association could say they covered 80% of the trade.

THE CHAIRMAN: Oh, 80% of the trade?

MR. CORLETT: Yes, sir.

THE CHAIRMAN: Would these 88 comprise nearly all the jobbers?

MR. MARGO: Yes.

THE CHAIRMAN: Thank you, I am sorry to interrupt.

MR. CORLETT:

(b) "From a survey of 88 Jobbing Organization there are:

1. two (2) members who have branches in most of the Provinces of Canada with a large staff of Salesmen and a yearly turnover in sales to Beauty Parlors, which may be close to one million dollars.
2. 17 Jobbers with medium sized businesses employing from 3 to 6 salesmen each and with a turnover of \$150,000 to \$300,000 each per year.
3. The largest number of Jobbers, about 69 in number, are one-man organizations with small stock, practically no cash capital and a



yearly average turnover of \$50,000 to \$100,000. This type of jobber has a small shop or office, often attached to his home, but operates mostly in visiting Beauty Salons personally by car, travelling all over his territory, taking orders, shipping the ordered goods, collecting the outstanding money and taking care of purchases, bookkeeping and other business details personally or with the help of his family.

"There are numerous one-man organizations, with similar methods of operation all across the country, which are not included in this survey."

In view of Mr Margo's statement, since I am the author of this brief I think I was over-extending myself when I used the adjective "numerous".

"This class of jobber is most affected insofar as his financial existence is concerned by loss-leader selling or severe price-cutting.

"Jobbers' means and margins are so small that a slight reduction in their returns means a loss instead of a break-even or small profit in their yearly profit and loss statement.

B. "Loss Leaders are either used for occasional advertising purposes or leading





brands or as a steady attraction.

(a) "As an example of the first case can be named a campaign of one large jobbing house which offered all across Canada - 1 dozen units of Cold Wave Solution . . ."

which, incidentally, is one of the major supply items sold by a jobber.

". . . with the purchase of one dozen units, slashing the already low price for this product by 50%. This campaign, which has promoted intensively for nearly 1 year not only led to price cutting all along the line, but also enabled this large jobbing house to fill Beauty Salons with large quantities of essential merchandise and in this way excluding the sales of competitors for a long period of time.

"This typical loss-leader sale, undoubtedly causing large financial losses to the Jobber involved, was discontinued about six months ago, but either may be revived or be tried on some other type of merchandise in the future.

"This product sold in this manner to Beauty Parlors happened to be the product of this Jobber who manufactured his own line and therefore could not be price-controlled. But, on the other hand, any understanding with this Jobber by other



competitors to omit such malpractice is prohibited under existing law."

It may be of help, Mr. Chairman, if either Mr Margo or Mr Goslett could indicate to the Commission the prevalence of this situation where you have a manufacturer who also does his own jobbing. There is some of that.

MR. MARGO: This one jobber, whose case is mentioned here, is one of the two big ones which fall under Class A mentioned here. He has really filled up the beauty salons so much that they have this merchandise lying around for half a year or longer, and it is perishable and is spoiled, and the whole industry has to suffer because of this strife. It is one really drastic case where it can show how much damage one person can do. This jobber has admitted that he had great losses on this strife but he filled up the beauty salon stores and he could not buy from any of the smaller jobbers, and this was the purpose of the strife. Now he has connections with smaller jobbers to the extent they should have them.

THE CHAIRMAN: In this case the jobber was also the manufacturer?

MR. MARGO: Yes. The cold wave solution is the same thing; If Mr. A. manufactures it, or Mr. B., there are slight variations and the names differ. The merchandise actually does the same job, and the chemical products are the same, so if Mr. A. sells his bottle, Mr. B's





is actually the same, When different manufacturers are members of one association and they can discuss this matter then we should try to hinder one jobber doing such a thing to the whole industry; and it has been done before.

MR. CORLETT: "There is no doubt that the whole trade has been badly hurt by this particular malpractice conducted by one single jobbing firm."

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MR. FAVREAU: I suppose we can consider these jobbers in that particular trade also as retailers because they, in fact, sell to the consumer?

MR. CORLETT: In one sense that is true. I would say they take the place of the retailer in the ordinary type of transaction where you go from manufacturer to jobber to retailer to the consumer.

MR. FAVREAU: Because their sales are not made for the purposes of resale?

MR. CORLETT: The consumer being the beauty parlour operator.

THE CHAIRMAN: The parlour is the consumer?

MR. CORLETT: That is right

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"(b) In order to attract customers all jobbers, but particularly the smaller ones, are forced to make price concessions, especially on standard items distributed by them. These are carried by every jobber



and are bought by the Beauty Salons preferably from the larger Supply Houses which they feel provide the specialties and superior service not offered by the financially weaker jobber.

"The consequence has been that Hair-dryers, Furniture (chairs, shampoo bowls, manicure tables, etc., ) Hair Tints and Dyes Shampoos and many other items are offered with price reductions ranging from 20% to 25% from their normal price whereas the jobber enjoys a regular discount of 40% only. When considering that the expenses each jobber has presently to face leave him with a net profit of 3 to 5% only before payment of income tax, a reduction to this extent of his business in the main items is ruinous."

The Commission might ask how we arrive at the figure "from 3 to 5%" as the profit before payment of income tax of representative jobbers in Canada.

This Association has not got the financial research resources available to maintain a separate department but this Association is closely allied with its counterpart in the United States, known as the Beauty and Barber Supply Institute -- apparently quite a wealthy organization -- and they can conduct these research facilities. Apparently, the trend in the United States is the same as here, and in 1947 the Beauty and Barber Supply Institute incorporated in New York had a survey made entitled "Costs of





Doing Business in 1947". They have a summary of their findings and the first one is that the typical beauty and supply dealer -- that is, in the United States -- operated in 1947 at a net profit of 3.3% before taxes on sales of \$134,000.00. So that not having the research facilities here, after having canvassed the jobbers, apparently that was well-known that the net profit is from 3 to 5% before payment of taxes.

THE CHAIRMAN: Have you any information that would show the conditions on which they operate are the same as those in Canada? Do they have the same margin?

MR. GOSLETT: Yes, the very same, discounts are similar, and expenses run the same. We have to pay our salesmen on a 15% basis.

THE CHAIRMAN: And the United States work on the same -- 15% to the salesmen?

MR. GOSLETT: The same.

MR. CORLETT: One further reason for that, which I mention later in the brief, is that many of the American manufacturing establishments in this industry have subsidiary companies here in Canada, and it is preferable to do it that way, because, as you know, the Customs tariff protection duty on beauty products is quite high; I think it is 21½%.

MR. WHITELEY: I am not sure about point (b) on page 4

MR. CORLETT: Exactly how these concessions



are made?

MR. WHITELEY: No. You state here that the small jobber, in order to offset some of the advantages of the big jobber, makes price concessions.

MR. GOSLETT: That is very easy for a man running a one-man concern where he has probably his stock in his basement and no office expenses and no salesmen to pay. He can do that where the legitimate jobber, who maintains an office staff and salesmen, just cannot.

MR. WHITELEY: There seems to be some divergence and advantage between the big and the small, and under resale price maintenance the small man would not be able to do what you state he is doing here. What advantage is left to him as against the big jobber?

MR. GOSLETT: That is one thing that has come up so much more since price maintenance was abolished. Because before that the manufacturers could stop these small jobbers from cutting prices by cutting off their supply if they did. Since the law came in they can't do it. They have no club to hold over their heads.

MR. WHITELEY: Yes, but the statement here is that it is to offset the advantage which the big jobber possesses. If you take that away, what protection have you left him?

MR. GOSLETT: If you take the present advantage away from the small jobber, the legitimate jobbers will be able to operate as they



used to operate -- as a business and not as a racket.

MR. WHITELEY: According to this statement here, that would leave the business in the hands of the big jobber.

MR. GOSLETT: Pardon?

MR. WHITELEY: The statement made in the brief is that the beaut. salons preferably buy from the larger supply houses which they feel provide the specialties and superior service not offered by the financially weaker jobber

MR. GOSLETT: That is so in many cases, because if a beauty parlour requires things to work with in a hurry, very often the small jobbers haven't got it in stock and they have to wait, but the big jobber can supply them right off hand

MR. WHITELEY: Yes, but the brief indicates without this advantage of price concession the business would tend towards the bigger jobber.

MR. GOSLETT: Yes.

MR. WHITELEY: And that would mean the small man would disappear?

MR. GOSLETT: I hope so.

MR. CORLETT: Mr. Commissioner, I think I comment on this practice a little later.

THE CHAIRMAN: I wanted to raise the point because there seems to be a divergence between the two classes in the same trade. We have the point well in front of us now, anyway.





MR. CORLETT: "Proof of this situation is found in the jobbers' credit situation which is constantly deteriorating. A credit survey is attached as Exhibit 'A' hereto. From this survey, it will be seen that the sales of from 7 to 11 manufacturers to jobbers amounted to \$622,749. for the first four months of 1954. From this total were overdue, after the regular 30 days credit time amounts as follows"

In other words, it is customary in this trade to give 30 days in which to pay bills, so that these figures represented the overdue credit situation as of the last day of the four-month period in this year

"30 days	-	\$138,379.
"60 days	-	49,188.
"90 days	-	23,790.
"more than 90 days-		35,605., or in
"the average 40%."		

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THE CHAIRMAN: In my copy the 49,000 figure reads 43,000.

MR. CORLETT: Well, it should be 49,000.

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"It has to be taken into consideration that the trade with Beauty Salons - contrary to the general trend - has been increasing continuously. There was no slow-down in the turnover during the last



1½ years in this special trade. It easily can be realized what disastrous consequences a downward turn in this exceptional situation would have when the financial situation of the jobbers is already so bad during good times."

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MR. WHITELEY: The table, schedule A, that is by months?

MR. CORLETT: Yes I stand corrected; Mr. Margo has pointed out to me that 43,188 . . .

MR. WHITELEY: No, but how do you total these months? Isn't this the situation as of each month?

MR. CORLETT: No, this represented a survey of, firstly, sales made by manufacturers for the first four months of this year, and the overdue amounts were the amounts overdue to the reporting manufacturers as of April 30th, 1954.

MR. WHITELEY: Take the first month, January; there was a total amount owing of \$146,441. ?

MR. MARGO: The first figure, the 146,441, is the total sales of these manufacturers in January, and from the total sales, overdue were, 30 days \$29,000.00, 60 days \$11,470.00, 90 days \$8,900.00 and even longer than 90 days -- that means more than four months -- in total, \$12,000.00. That means altogether overdue were \$61,000.00, or 42%. Then, the same refers to the three other



manufacturers; and then the total for the four months in which you find the average is 40%.

MR. WHITELEY: I see that, yes.

MR. FAVREAU: That is total sales in the first column -- that is not the total owing?

THE CHAIRMAN: Take the January list of figures; you show a total outstanding for 30 days or more of \$61,000.00, or 42%?

MR. MARGO: Yes.

THE CHAIRMAN: The balance of 58% was owing for less than 30 days?

MR. MARGO: Yes, these were normal sales.

THE CHAIRMAN: But the total, just the same for the "more than 60 days" should be 43,000 instead of 49,000?

MR. MARGO: Yes, it was a misprint.

MR. CORLETT: We do not pretend to be statisticians.

THE CHAIRMAN: No, it is a typographical error.

MR. CORLETT: "One of the many reasons why jobbers give price reductions is that Beauty Parlors play-off the visiting competitors one against the other.

"The particular jobber - in order to keep his connection with a particular Beauty Parlor - often feels obliged to concede a very low price, without being able to prove that the claim of the Beauty Parlor owner is correct, but nevertheless





aware that there is no price control, and therefore powerless to counteract. This is a very humiliating situation.

"(c) The great variety of products Beauty Parlors require for their services are extremely competitive.

"Practically every one of the larger Manufacturers in the United States has opened a Branch in Canada where their merchandise is manufactured in order to overcome the price-increase caused by a Customs Tariff which is generally  $22\frac{1}{2}\%$  ad valorem.

"Besides these there are numerous Canadian Manufacturers who intensively promote their own lines.

"Many of the items these different Manufacturers produce are made for the same purpose and therefore highly competitive. The potential danger that an extensive price increase could be expected in the event of the present legal prohibition against resale price maintenance agreements being repealed does not exist under these circumstances. It can be proven that the general price trend in the Industry is continuously and steadily downward because of this healthy competition, which, at the same time, has helped to improve the quality and efficiency of the products offered to the Beauty Salons.



"C. "The Association sees in the repeal of Section 34 of the Combines Investigation Act (R.S.C. 1952, Ch. 314) which is the main basis for the current loss-leader malpractice the best means to keep an industry alive which delivers the goods for a large and important service trade.

"If the present law prohibiting resale price maintenance Agreements should not be rescinded in toto the Association would ask the Commission to consider the following special situation which, as far as is known, has not been subject to any special attention in any other case and may be of help to the particular situation in our industry

- (a) "Beauty salons do not sell any goods to their customers (with the exception of very small occasional sales, which are negligible in this connection, such as a hair net or some hair pins). They offer services. As instances of such services there may be mentioned the application of permanent waves, shampoos, cutting and setting of hair, hairstyling, manicuring, etc. The skill of the operators and their working hours are the main basis for the charges of the owner of any such establish-



ment to their patrons. The efficiency of the Beauty Salons in their work is the basis of their reputation and success. The scale of their financial returns is often and mainly dependent on their 'good name'.

"This fact shows that the products used for some, but not all of the Beauticians' work play only a minor part, if any, in their dealings with their clients.

"(b) Of as little importance as the type of products used, is the cost of these products-in the charges of beauticians' services.

"How small this part of their cost is, is shown by a break-down of the total cost for the up-keep of a Beauty Parlor (Main items: Shop rent, operators' salaries, telephone, light, hot water, etc.). It is an established fact that the supplies which Beauty Parlors have to buy from their jobbers range only from 8 to 10%, of their total expenses. Any variation of these jobbers' prices, even up to 20% or more, obviously does not need any consideration in the charges to the salon's patron, and actually are not taken into consideration. The difference would be a matter of a few cents or fractions of cents, whereas the beauticians





charge dollars For instance: Beauty Shops charge for one Haircoloring job from \$5.00 to \$7.50 and need only one bottle of tint for this type of work which is listed at .65¢. As a loss-leader, this bottle would be available with a reduction or from .10 to 13 cents.

"(c) Proof of this general experience in our special type of trade is the following: In the Province of Quebec, Beauty Salons are supervised by so-called Commissions Conjointes des Coiffeurs pour Dames under the authority of Order-in-Council 789 of July 23 1952, pursuant to the Collective Agreement Act, (R.S.Q. 1941, Ch. 163, as amended). These Commissions have the right besides other functions, to set the minimum prices for the services provided by Beauty Parlors. Accordingly minimum prices have been fixed under Section VIII of this Order-in-Council. To lower these prices below the prescribed minimum is an offence. Section XII(c) of the same Order-in-Council says:

"No one shall offer gratuitously the services mentioned in section VIII, of the decree, or reduce the prices or give any object whatever, as a premium, in order to reduce the prices or to attract the customers by means resulting in a



reduction of the prices or any other way. It is also prohibited to offer such services at prices lower than those herein established."

"Beauty Parlors which have not maintained these minimum prices have been brought before the Courts and only lately a Court in Montreal punished violators of this law.

"These service charges have not been lowered since Beauty Parlors have enjoyed the advantages of the loss-leader malpractice." That is, since Section 34 was added to the Combines Act at the end of 1951.

"Beauty Parlors which had the opportunity to get lower prices in this way could not and did not pass these savings on to their clients. They enjoy the higher returns with the consequence that only jobbers have to suffer, with the results as shown above. Similar laws affecting minimum prices charged by Beauty Parlors exist in all other Canadian Provinces with the exception of the Maritime Provinces and British Columbia where special regulations prevail."

There we have, on the authority of a member of the Joint Commission for this area administering the hairdressing trade, there are similar price regulations in all of the other Canadian Provinces. We have a letter from one dealer in Saskatchewan citing the Industrial Standards Act



as the legal authority for such minimum prices in that province, and to my knowledge there is a Industrial Standards Act in Ontario, and we understand the hairdressing trade is covered under the Ontario Statutes.

THE CHAIRMAN: I think in some of the provinces the minimum prices do not cover all the service.

MR. CORLETT: That may be, Mr. Chairman. I don't know whether the Commission would want tabled the order in-Council No. 789 of July 23rd 1952?

THE CHAIRMAN: I think it is a matter of public record; we can refer to it if necessary.

MR. CORLETT: Yes

"Also it is the general experience that even where there is no law similar to that in the Province of Quebec, price advantages obtained by Beauty Parlors are handled in the same way. Jobbers suffer financial hardships which endanger their future existence. Beauty Parlor Owners take full advantage of this opportunity and their clients have to face unchanged charges

"(d) This situation has brought us to the following conclusions:

"Goods sold by our Jobbers to Beauty Parlors, are not bought by the public in Retail Stores. Their merchandise cannot be considered as 'Retail' Goods.





"On the other hand most cases investigated by the Combines Office so far because of a 'combine' or 'price-maintenance' have referred, to the best of our knowledge, to goods which have to be sold 'at retail'. It seems obvious that the protection to the public against excess prices contemplated by the Combines Investigation Act refer mostly to goods which are actually bought by the public at retail.

"As shown above, the public will not be affected by price charges for products sold by jobbers in our Trade. As Beauty Parlors have not lowered their prices, because of loss-leader practices and indeed are limited in this respect by various provincial Statutes, it can not be expected that they will increase their prices when jobbers are able to charge normal prices again. The public therefore would not be affected by this return to a normal price situation, as far as the jobbers are concerned, and the Beauty Parlors which are in an exceptionally strong financial position anyway will have their normal returns on the basis of their unchanged service charges and the jobbers will be able to make a living, give better service to their clients and pay their bills.

"We consider the living conditions



or our jobbers as so serious and their position in our trade as so important that we cannot recommend too strongly a clarification in the present law which will have the effect of giving jobbers an opportunity to return to normal conditions.

So much for the plight of the jobber. Now, the position of the manufacturer in the beauty supply industry.

Although it is our view that the chief sufferer is the jobber as a result of the current practice of his resorting to loss-leaders in his sales, nevertheless we wish to go on record as stating that the manufacturer in the beauty supply industry suffers too as a result of the prevalence of this malpractice. The manufacturer is adversely affected in the following ways:

(a) "The jobber as a result of this loss-leader selling seriously reduces or eliminates his legitimate profit with the result that he is unable to pay the manufacturer for his purchases within the period of 30 days as is customary in this industry. Consequently, the manufacturer is forced to extend greater credit facilities to the jobber thus tending to impair the financial position of the manufacturer. Evidence of the seriousness of this problem is illustrated by the credit survey



of jobbers which is attached as an exhibit to this brief

(p) "Since practically all of the manufacturers' products are sold by brand names serious price cutting of them by the jobber does lessen the prestige of the product in the eyes of the operator of the beauty salon. This condition was recognized in a recent British investigation of this same problem as being one of direct concern to a manufacturer of a branded article. The Report of the Committee on Resale Price Maintenance 1949 (usually referred to as the Lloyd Jacob Report) refers to this matter in paragraphs 162 and 163 of the Committee's Conclusions and Recommendations which read as follows:

"162. 'We take the view that the manufacturer of a branded article remains responsible for the quality of the goods sold under his own brand; he cannot therefore be indifferent to the terms on which his goods are sold to the public. Our evidence has shown that well-known branded articles are particularly liable to be used as loss-leaders by distributors and we are satisfied that their use in this way has not brought any permanent advantage





to manufacturers distributors or the shopping public as a whole. Re-sale price maintenance offers a convenient means of protecting brands against misuse by distributors in this or other ways.'

"163. 'We recommend that no action should be taken which would deprive an individual producer of the power to prescribe and enforce resale prices for goods bearing his brand.'"

Then, Mr Chairman, we made an effort to answer certain of the specific questions raised in a questionnaire submitted to us insofar as they are applicable to this industry.

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"The Commission's letter which sets forth a series of questions has been studied and we wish to cite the following facts in an endeavour to answer the relevant questions as an assistance to the Commission.

(1) "Loss-Leader selling of the kind described in this Brief and resorted to by jobbers in the beauty supply industry is common throughout Canada. The practice of cutting of prices of articles relates to each of the major items for sale to the beauty salons. The duration of any of these special deals might last anywhere from a few days up to and as long a period



of time as one year.

(2) "The form of such 'special deals' by the jobber to the beauty salon takes the form of free goods as far as supplies such as hair dyes, cold waving, shampoos, etc., are concerned. The extent of such free deals will range from one free unit per dozen units right up to 12 free units per dozen. Sales of supplies to a beauty salon are regular in their occurrence. On the other hand jobbers sell equipment such as hair dryers, manicure bowls, etc., to the beauty salons but such sales are naturally more irregular in their occurrence. Loss-leader selling as far as equipment is concerned takes the form of special discounts.

(3) "Loss-leader selling takes place in connection with all important lines handled by jobbers. The three major supply items handled by jobbers are hair dyed, cold waving and shampoos and they are all subject to loss-leader sales.

(4) "A particular jobber who initiates loss-leader selling at any given time on any one item hopes to capture purchases of other items by the beauty salon and thus succeed in cutting out other jobbers who ordinarily would supply that particular beauty salon. This malpractice might easily tempt and often does entice the



operator of the beauty salon to buy other merchandise from this price cutter in the hope that he might in the future slash the prices of other items of supplies and thus benefit thereby. On the other hand, jobbers who have previously supplied that particular beauty salon will likely endeavour to maintain that account by meeting this price slashing or even bettering it. Thus it is easy to see how a beauty salon operator under such extraordinary circumstances can effectively play one jobber against another jobber to her own personal financial advantage. Therefore, in most cases where any one jobber starts to resort to loss-leader selling all competitive jobbers quickly fall in line in order to meet this new competition.

(5) None of the jobbers of the type of article subject to the loss-leader selling benefit since they seriously reduce or eliminate as a result of such practice their normal profit on this item. Also the public does not benefit since any financial gain derived by the beauty salon as a result of such malpractice is not passed on to them in the form of lower prices for permanent waves, hair colouring, etc., and indeed might be precluded from benefiting thereby due to the minimum prices in



effect for such services performed by hair-dressers by virtue of various provincial Statutes.

(b) "Because of the use of the term 'loss-leader', we recognize that it is difficult to define it precisely. However we submit that in the beauty supply industry it covers extreme cases where an article is sold at a loss by the vendor and more common situations where the article is sold by a jobber at less than the usual markup. Earlier investigations into the practice of selling loss-leaders in Canada, the United States and the United Kingdom would seem to give acceptance to this broader definition of the term so as to include cases where an article is sold at less than the usual or normal markup. For instance in Canada, the Report of the Royal Commission on Price Spreads 1935 at page 226 stated:

"One of the most common practices of modern merchandising is the use of 'leaders' or 'loss-leaders'. These terms have, as yet, received no exact definition, but are understood broadly to mean merchandise featured or sold at prices easily distinguished as being less than customary prices. Such price reductions are made for the purpose





of attracting customers and promoting sales, not so much of the featured articles as of other articles on which a higher profit is secured.

"While the term 'loss-leaders' may have had its inception in the use of articles which were actually sold below cost, an actual loss is nowadays seldom experienced on most leaders. The general practice is to reduce materially the customary margin on goods used as 'loss-leaders'."

"In the United States the Federal Trade Commission Report on loss-leader selling in chain stores, 1928-1934 dealt with the definition of a loss-leader at pages 2-3 as follows: "

"The terms 'leader' and 'loss-leader' have indefinite meanings and are used by chain-store organizations in widely different senses. A loss-leader apparently is variously considered as an article sold below net invoice cost, net purchase cost or net manufacturing cost as the case may be, or it may be applied to goods sold below the net purchase cost of the goods plus operating costs, or simply to goods sold below



the usual mark-up.

"In a broad sense leaders may be defined as merchandise featured or sold at reduced prices to attract buyers and thereby stimulate sales of these leaders and other goods."

"Finally, the Lloyd Jacob Report in the United Kingdom, already quoted in this Brief, at page 9 dealt with the scope of a loss-leader as follows:

"'Loss-leader' is the name frequently applied to an article sold at a price cut drastically below the established retail price. It is used as a form of advertisement to attract customers into a shop in the hope that they will, at the same time, purchase articles showing a high rate of profit, or that the increase in turnover of articles showing a normal rate of profit will outweigh the losses sustained on sales of the leading line. Very often well-known proprietary articles appear to be used for this purpose, their established price provides a standard against which the public may immediately appreciate the extent of the price reduction. Furthermore the public can be assured that the price reduction



is real and not a reduction applied to an article originally marked at a very high price in order to create the appearance of a bargain. Proprietary lines are not, however always used. One case drawn to our attention was that of a shop selling a bucket at the far end of the counter, the intention being that the customer would fill his bargain with other purchases on the way out.'

(7) "In the beauty supply industry loss-leader selling is resorted to by jobbers at all times regardless of the level of business activity.

#### REMEDIES.

"In conclusion it is the view of this Association that the unfortunate consequences outlined in this Brief and affecting manufacturers and jobbers in the beauty supply industry can be remedied by a legal restoration of the right to enter into resale price maintenance agreements by manufacturers.

In this respect we are impressed with the sound reasoning contained in the dissenting judgment of Mr. Justice Oliver Wendell Holmes of the Supreme Court of the United States in the case of Dr. Miles Medicine Co. v. Park & Sons Co. (1911, 220 U.S. 373)."

I think that was the case that held that resale





price maintenance in 1911 was contrary to the anti-trust laws.

"This case concerned the legal validity of resale price maintenance agreements and Mr Justice H Limes in his dissenting judgment made the following sanguine observations:

"I think that we greatly exaggerate the value and importance to the public of competition in the production or distribution of an article (here it is only distribution), as fixing a fair price. What really fixes that is the competition of conflicting desires. We, none of us, can have as much as we want of all the things that we want. Therefore, we have to choose. As soon as the price of something that we want goes above the point at which we are willing to give up other things to have that, we cease to say it and say something else. Of course, I am speaking of things that we can get along without. There may be necessities that soon, or later, must be dealt with like short rations in shipwreck, but one, are not Dr Mile's medicines. With regard to things like the latter it seems to me that the point of most profitable returns marks the equilibrium



of social desires and determines the fair price in the only sense in which I can find meaning in those words. The Dr. Mile's Medical Company knows better than we do what will enable it to do the best business. We must assume its retail price to be reasonable, for it is so alleged and the case is here on demurrer, so I see nothing to warrant my assuming that the public will not be served best by the company being allowed to carry out its plan. I cannot believe that in the long run the public will profit by this Court permitting knaves to cut reasonable prices for some ulterior purpose of their own and thus to impair, if not to destroy, the production and sale of articles which it is assumed to be desirable that the public should be able to get ....I think also that the importance of the question and the popularity of what I deem mistaken notions make it my duty to express my view in this dissent."

"Such a remedy in Canada would necessitate the repeal of Section 34 of the Combines Investigation Act. Also in this connection we wish to stress the fact that



due to the multiplicity of manufacturers and jobbers who for the most part manufacture and distribute the same items used in the trade, it is very unlikely that any one manufacturer or any one jobber will assume a dominant position in the industry and thus foster monopoly conditions.

As an alternative remedy, assuming that section 34 of the Combined Investigation Act is retained in its present form, it is our submission that such a peculiar industry as the beauty supply industry should be made exempt from the prohibition against resale price maintenance agreements as presently provided for by Section 34 of this statute.

"ALL of which is respectfully submitted."

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That is the case of this Association.

THE CHAIRMAN: Do you wish to add anything further?

MR. CORLETT: No, I don't think I have anything further to add.

THE CHAIRMAN: Mr. Margo or Mr. Goslett?

MR. MARGO: No sir. The only thing I would like to stress is that this situation as presented here prevails during the time where our industry is progressing in turnover. We have seen during the last two years an ever increasing



turnover; the demands of beauty parlours are greater, and the merchandise delivery is of a larger volume, and we are very much afraid that if this loss-leader situation continues times will come when the business will not be as voluminous. Then the jobbers are in much more danger than they are today.

MR. FAVREAU: It is your experience that those who have cut the prices -- those wholesalers or jobbers who have cut the prices, they themselves had a bigger turnover?

MR. MARGO: No, we have not that experience because when one starts to do that the others have to do it too, and that levels out.

THE CHAIRMAN: You mean nearly everybody does it?

MR. MARGO: Yes, because in our trade it is not so that you have one item in which you loss-leader, but these are all the main items which are bread and butter for the jobber, and he cannot leave it out because another jobber has a loss-leader and he has to sell his too to make his living. That is the great difference with the retail trade; a big department store can have one loss-leader to attract the public and sell all the other merchandise for normal prices. Here, when one of the main items is cut in price, that is the existence of the jobber and that is the great difference in our trade.

THE CHAIRMAN: Is it the normal practice for the margin on the selling price by a jobber





to be 40%?

MR. MARGO: Yes. 40% is the average. There is certainly not a chance for a manufacturer to sell an item for a smaller margin. The jobber needs this to have a small profit.

THE CHAIRMAN: 40% of the selling price?

MR. MARGO: That is right.

THE CHAIRMAN: Not a 40% mark-up?

MR. MARGO: When the jobber sells for \$1.00 he pays 60¢.

MR. FAVREAU: Did you say there is not much chance there would be smaller margins than 40%?

MR. MARGO: No, a manufacturer could not sell his merchandise to a jobber successfully if he would give any smaller margin than 40%.

MR. FAVREAU: Are there any greater margins than 40%?

MR. MARGO: Very occasionally because there isn't much left.

THE CHAIRMAN: Your cost of doing business is very much higher than in other trades?

MR. MARGO: That is right, because the jobber has an outside business. It is not so that the jobber comes to the beauty parlour -- he has not salesmen, different salesmen to go from shop to shop. They have to be snapped to the beauty parlours, and it would cost a lot of money and he has to collect the money. The jobber has to go to them and get some money from them when he sells. So, he is continuously on the run, and that is a



great expense too.

THE CHAIRMAN: The other question occurred to me during the course of the reading. You referred to the prices charged by the operators and you say they are not affected by the prices they may have to pay for the supplies which they use -- cold waving, or whatever it may be. Now, do operators uniformly charge the minimum prices authorized by the order-in-council?

MR. GOSLETT: No, no; they have a scale of prices according to the prestige of their shop.

THE CHAIRMAN: That is what I wanted to get at.

MR. GOSLETT: A good high-class salon will naturally charge twice as much for the same work as some of the small beauty parlours who have not got the facilities -- not only the facilities but the appearance and general make-up. In Montreal here there are some very elaborate beauty parlours, there are in all the big cities. For instance, there is one beauty parlour in this city that spent \$125,000.00 in re-fitting their salon. Naturally they are not going to be down amongst the minimum prices. They charge for the type of service they give, or type of service the customer expects them to give. Whether they give it or not is a different story, but, if in that class they are entitled to ask a big price and they get it, but they don't do it for a dime less because they buy something cheaper.



THE CHAIRMAN: No, but they might do it for \$5 00 more because they pay 15¢ more.

MR. GOSLETT: There is one point I would like to stress, Mr. Chairman, and that is that since Article 34 came up it has been so very evident in our trade what has happened; prior to that we were able to ask a list price for equipment, which is a big item, which runs into money, and we were able to get the list price because the manufacturers protected those prices, and if one jobber was cutting prices he would cut him off his list and not sell him the merchandise, so as to protect the other jobbers. Since 34 has been in the manufacturer cannot do a thing about it. For instance, in one case last year on a sale of 10 hairdryers which should have sold at \$175.00 apiece to make a normal profit, they were sold at \$120.00. That kind of nonsense is just killing the industry, and it can kill an industry no matter how big. Take the example I happened to read in Time last Saturday; in the United States there were 1,174 failures in automobile dealers in three months because of a malpractice which jumped up there where they were selling new cars to used car lots so as to unload their stock not only of 1953 cars but also 1954; and 1,174 dealers have gone under in three months. The legitimate dealer still cannot sell his new cars, and that is what we are up against.

MR. WHITELEY: Have the public any difficulty in buying a car?



MR. GOSLETT: No, the public can buy cars, there are so many cars. Take a look at that lot up at the corner of Ottawa Street.

MR. WHITELEY: Isn't that the purpose of the trade -- to supply cars to the public?

MR. GOSLETT: Supplying cars to the public, but the roundabout way which I mentioned -- the automobile manufacturers state their list price and hold their dealers to that, but to get around that the dealers have been selling new cars as used cars through the used car lots.

THE CHAIRMAN: Isn't that because the pressure of economic circumstances makes it impossible for them to sell their quota -- or, they think it is impossible?

MR. GOSLETT: Well, the legitimate dealer is still getting squeezed out, because he doesn't do it.

THE CHAIRMAN: What I am suggesting is that the dealers have more cars on hand (because perhaps they have a quota they have been required to take) than they can sell, and in order to get rid of them they adopt this means which apparently is not capable of being stopped by price maintenance.

MR. GOSLETT: Well, the automobile question in the United States, the Government is getting after the practice of selling new cars as used cars.

THE CHAIRMAN: In the United States they have not only franchise dealers, but in most of





the States they have resale price maintenance, and apparently it is not too successful.

MR. GOSLETT: Not in that case.

THE CHAIRMAN: To get back to another question, can either of the delegates, Mr. Margo or Mr. Goslett, tell us, if they have any information, whether the great majority of operators of beauty parlours work on the minimum price schedule or above it?

MR. GOSLETT: Above it.

THE CHAIRMAN: So that the legal restriction is not really necessary at the moment?

MR. GOSLETT: Well, no, I don't think so.

THE CHAIRMAN: I have no doubt it was necessary at the time it was established.

MR. GOSLETT: That is right.

MR. MARGO: For instance, in British Columbia, where they have not such a lot but where the beauty parlours are not allowed to advertise prices the prices are higher than in other provinces.

THE CHAIRMAN: In British Columbia the prices on most things are higher.

MR. MARGO: That is right.

THE CHAIRMAN: My colleague from the Province of Quebec suggests that perhaps the ladies of British Columbia need more beautifying.

MR. GOSLETT: At least we have not asked the jobbers to subsidize it, but we may have to come to it.

MR. GERIN-LAJOIE: I would like to put a



few questions as attorney for the inquiry. Would you have any figures as to the number of jobbers from 1946 up to now -- the changes in number from year to year?

MR. CORLETT: I don't think we would, Mr. Lajoie because I mentioned to the Commission the financial resources of this Association are not great enough that that type of activity can be carried on, and as far as the Dominion Bureau of Statistics is concerned it has always been the complaint of this group that we are lumped in and shown with the Toilet Goods group, so that I don't think -- unless it was done quite recently -- that we have separate statistics.

MR. MARGO: We can only say the change in number is not substantial. There are always a few jobbers coming up and others disappearing, but there is not a great change. Like in the United States, for instance, after the war all the veterans who could jumped into this trade, and then, after awhile, disappeared. That was not the case in Canada. We have a fairly steady number of associated members, and outside there are not many more.

MR. FAVREAU: Would some figures in this respect appear in your brief which you presented in 1951 before the Parliament and Senate Committee?

MR. CORLETT: Yes, they did. I was checking them before I prepared this, and I don't think there has been any change in the membership of the Association one way or the other since that



time.

MR. FAVREAU: I suppose those figures could  
to  
be referred<sub>by</sub> the Commission?

MR. CORLETT: Oh, yes.

MR. GERIN-LAJOIE: I wonder if there is a  
misunderstanding on my part on page 4 of your brief;  
hand  
You say, "But, on the other<sub>A</sub> any understanding  
with this jobber by other competitors to omit such  
malpractice is prohibited under existing law".  
would such an understanding have been possible be-  
fore the present legislation?

MR. CORLETT: Well, perhaps I am ambiguous  
there. I was thinking of the Combines law. In  
other words, you could not have a group of jobbers  
-- at least, they would be exposing themselves to  
legal liability -- if, seeing one jobber starting  
to cut his prices, they got together on the factor  
or price and in some way hoped to be able to put  
a stop to it. That is what I had in mind. I  
wasn't thinking of a combine under Section 34, but  
rather the Combines Act as such.

MR. GERIN-LAJOIE: Between manufacturers or  
between manufacturers and jobbers?

MR. CORLETT: I think what we had in mind  
was competing jobbers getting together.

THE CHAIRMAN: Just on that point, your sug-  
gested remedy or the repeal of Section 34 would  
not affect that situation?

MR. CORLETT: Oh, no sir.

THE CHAIRMAN: It would not be any better



position?

MR. CORLETT: No, the position of the members of the Association with respect to the state of the law would be the same, but it is the opinion of the members of the Association that if they could go back to the position that existed prior to the enactment of what is now Section 34 that their position would be bettered considerably and they would be able to get away from this condition of malpractice. You will remember, I think, that Mr. Favreau, having referred to the comments we gave before the Joint Parliamentary Committee, Mr. Swenson, the president of the Association at that time, made a statement that 80 or 90% of the articles in this industry up to that time were price maintained.

THE CHAIRMAN: The repeal of Section 34 would give you no protection with respect to the particular case that you cited just before this statement; that is, the case of the manufacturer who is also the jobber. You would have no legal means of doing anything with him, because Section 2 is still in the way.

MR. CORLETT: No, that is correct.

MR. GERIN-LAJOIE: A few questions were put to you, Mr. Corlett, on page 4, the paragraph marked (b), about the real meaning of that paragraph: Do you mean that beauty salons prefer to buy from the larger supply houses which





provide the specialties and superior service not offered by the small jobbers; is that the meaning?

MR. CORLETT: I think perhaps Mr. Margo could reply to your question.

MR. MARGO: Naturally the larger supply houses have greater advertising power and better facilities to give service and a greater range of merchandise. The beauty parlours are very particular in their demands and it is a question of one type of merchandise being very conservative and they don't like to change. The large manufacturers and the large beauty supply houses are able to point to a specific line, and the small jobber has a hard job to introduce whatever he can offer, and he then comes along and says, "Why has this man given it to you for 5¢ lower?". That is his technique to try and swing the customer over to his house.

MR. GERIN-LAJOIE: But I suppose the situation would have been the same previous to the present legislation?

MR. MARGO: Quite right. He would always try this, but on the other hand he has to consider if it is not more dangerous for him to lose one of the important lines he has when he cuts prices, and the larger supply houses complain, and the forced manufacturer sees himself <sup>forced</sup> to cut the small jobber out so that he won't do it.

MR. GERIN-LAJOIE: Do you think there would be much difference?



MR. MARGO: Oh, yes, there is no doubt about it.

MR. GERIN-LAJOIE: Regarding the statistical table referred to on page 5, but which we find detailed as Schedule A, the number of reporting manufacturers, could you tell whether, for instance, the seven reporting manufacturers in March are included in the eleven, for instance, in January?

MR. MARGO: I cannot tell you this. I suppose they are, but these figures were collected by an independent firm who has not given out the names of the manufacturers and the names of the jobbers, so I can't tell you in detail who they are, but naturally we can supply it if it is required.

MR. GERIN-LAJOIE: The number of reporting manufacturers seems pretty small.

MR. MARGO: It is, that is right.

MR. GERIN-LAJOIE: Do you think we can really make an opinion out of this small number?

MR. MARGO: Yes, these are the leading manufacturers, mostly Canadian manufacturers, who continuously supply most of the jobbers.

MR. GERIN-LAJOIE: Now, you cover in this Schedule only four months?

MR. MARGO: Right

MR. GERIN-LAJOIE: Is it very significant to look at the figures for such a short period?

MR. MARGO: This is a good average



MR. GERIN-LAJOIE: If I look at this I notice that the percentage in the "over the 30 days period" does decline from January to April from 42% to 41 to 37?

MR. MARGO: That may be coincidence. I cannot tell you now that happens, but partly it may be that in the spring the business usually is better. We have a kind of a season from April until June in the beauty parlours. The permanent wave during this time, and the financial position may be a little better -- not very much, but it is something.

MR. GERIN-LAJOIE: Is it your opinion that this situation, let us say between 30% and 40%, is a new situation; was it any different last year or before the present legislation?

MR. MARGO: We have no survey or idea in figures before this law was in force. I couldn't tell you, but my experience is that we manufacture and deal with these jobbers, and it is that the situation is much worse than it was before.

THE CHAIRMAN: It is much harder to get money now?

MR. GERIN-LAJOIE: You are a manufacturer yourself?

MR. MARGO: Yes.

MR. GERIN-LAJOIE: What would be your figures roughly speaking, for the period covered here?

MR. MARGO: I really cannot tell you because I have no figures just now.



MR. GERIN-LAJOIE: My question would be this; I wonder if you could give us an idea of the difference in your trade -- since you don't know about the whole trade -- in your own business, the difference between the present situation and the situation three years ago?

MR. MARGO: I understand your question, but I can't give you any detailed figures. That is impossible for me for two reasons; the one reason is that the volume of business in our company, for instance, has increased substantially, and the expansion of our business is all over the trade, so I can't compare these. On the other hand, we are very careful with our credits and we are in the fortunate position of extending much more credit than we did before, but this depends on the greater business we have now, so I cannot compare these, but when I go from case to case and consider single customers, we have seen so many cases where the jobbers are not able to pay anything and we wait for months and months and we cannot get any money.

MR. GERIN-LAJOIE: But you are not in a position to give any rough figures?

MR. MARGO: No, I can't.

MR. GERIN-LAJOIE: Also on page 5, the middle paragraph, "One of the many reasons why jobbers give price reductions is that beauty parlours play-off the visiting competitors one against the other.": Was the situation any different





before the present legislation?

MR. MARGO: Certainly. We had one line of tints where the customer tried to tell the jobber, "I can get from jobber B a discount", and he could smile and say, "That is not true. I know he cannot do it because he would lose the line immediately", and we have maintained the situation until 1952. It was impossible for the beauty parlours to do it. They have tried, but very often the manufacturer stood behind the jobber and they just could not do it. The same lines today are lost for the jobbers, because they have to follow all these things.

MR. GERIN-LAJOIE: You are quite definite in your opinion there was no playing-off possible?

MR. MARGO: No.

MR. GERIN-LAJOIE: And none took place?

MR. MARGO: Oh, not none -- I mean, there are always lines, I mean the leading lines, there are always lines not protected by the manufacturers which the beauty parlours could take advantage of; but the general lines which are important for the jobbers -- brand names -- they are absolutely protected.

MR. GERIN-LAJOIE: Page 6: I wonder if you would have any statistical data establishing the last part of your first paragraph: "It can be proven that the general price trend in the industry is continuously and steadily downward ...?"

MR. MARGO: Yes, we could, if you saw certain lines -- take cold wave solutions; cold wave



solutions were introduced in 1944 in Canada, during the war, and at that time one unit was sold to beauty parlours for \$2.00. That is a one-pound tin. Today beauty parlours can get one unit for 50¢ and less, and there is quite a few other lines too. This is only one example, but I can give you all the ranges of the price -- price-cutting and price-lowering -- partly because of legitimate competition; but during the last two years it is much worse.

MR. GERIN-LAJOIE: What about lowering of prices; do you think much of it could be attributed to lower production costs?

MR. MARGO: That is right, and higher efficiency in manufacturing. There is no doubt about it. We can do that. The beauty parlours took advantage of this opportunity, but besides this, in each case where the price is lowered the manufacturer had to give 40% discount, so the jobber was in the same position and he could sell more shampoo, or whatever it was. They pay less to a jobber on his legitimate discount, so for him it didn't mean any difference.

MR. GERIN-LAJOIE: Around what period did your prices start lowering; was it immediately after the war?

MR. MARGO: No, it was later on; around 1950 -- 1949/1950. You can't give an accurate ---

MR. GERIN-LAJOIE: No, roughly?

MR. MARGO: Some articles lowered soon.



and some later.

MR. GERIN-LAJOIE: You are not in a position to tell to what extent the lowering of cost can be attributed to the lowering production costs or to the other factors you referred to?

MR. MARGO: No, that is hard to say; it is practically impossible.

MR. GERIN-LAJOIE: At the top of page 9, here again I wonder if there is a possibility of a misunderstanding: Don't you think the whole matter of investigation work against all levels of industry ---

MR. CORLETT: As far as the statement is concerned, I would have to concede that what we were thinking of was reports that have been made by Commissioners, and I think the Registrar before that, in many instances seem to deal with types of articles that were sold over the counter to the consumer. I was thinking of the case in Western Canada on optical goods.

MR. GERIN-LAJOIE: When I read this it crossed my mind there was a judgment not very long ago in the paper industry in Toronto, and that would be the manufacturers?

MR. CORLETT: That is right

THE CHAIRMAN: A great many of the cases involve the manufacturers rather than the retailer, do they not? That is, as far as commodities cases are concerned. As far as price resale maintenance is concerned, it has been at the



retail level, but combines has been right across the board.

MR. GERIN-LAJOIE: On the same page just before you go the position of the manufacturer you write "a clarification of the present law": Is it only a clarification, or purely and simply a return to the former position?

MR. CORLETT: It would be a clarification from the point of view of those engaged in this industry.

THE CHAIRMAN: Do you mean clarification or reform?

MR. CORLETT: Perhaps reform from the point of view of this industry would be more apt.

THE CHAIRMAN: You don't only want to know what the law is, you want it changed;

MR. GERIN-LAJOIE: On page 11, paragraph 1. I wonder if these special deals were not possible before the present legislation, and not only possible but were found in practice?

MR. MARGO: Certainly they are done quite successfully, but then the manufacturer on special occasions -- and this is done in the United States on a large scale, where there is a price-cut to promote this line or introduce a new article -- gives you special discount which you can pass to your customer or make a combination whereby the customer can save something. In most of the cases it started at the manufacturers' level, not at the jobbers' level as it does today.





MR. GERIN-LAJOIE: The following paragraph, that is No. 164 of the Lloyd Jacob Report, reads:

"Producers are not, in our opinion, entitled to use resale price maintenance to obstruct the development of particular methods of trading, to impede distribution by another manufacturer of competitive goods or to deprive the public of benefits of improvements in distribution. Public policy requires adequate distribution of goods with provision for such price reductions as are justified by low-cost distribution or by a regular policy of distributing surplus profit to the customer".

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MR. CORLETT: Mr. Lajoie, I would not object to that, nor do I think anybody in this Association would, but of course, as we have endeavoured to point out, the consumer is not going to get any benefit out of this practice of price-cutting that has been going on in this industry because the hairdresser represents the purchaser to the jobber, and is protected under various provincial statutes.

MR. GERIN-LAJOIE: But in this particular instance would we not be justified in considering the hairdresser as the consumer -- in this particular instance, insofar as he is not selling his product to another customer?



MR. CORLETT: I have never thought of a person engaged in a service industry -- and I presume that is what you would classify a hairdresser as -- I have never considered them to be the consumer. Maybe either of my colleagues might have different views.

MR. GERIN-LAJOIE: Well, actually the question is this; should we not favour the lowering of cost to the hairdresser?

MR. MARGO: That is quite right. We have thought about this too and we think we have not to consider this for the simple reason that the hairdressers have set their prices, and when you see these prices here they are set on normal conditions for the charges of the hairdresser. They take the price they have to pay for the merchandise used into consideration, but they have not taken into consideration prices on the lower level, and they never have changed their prices to the public. If you could say, "All right, the hairdresser no longer charges \$5.00 for an operation for service but \$4.50 because she does not pay so much for the merchandise", then you are justified in making such a statement, but we prove here, according to the legislation in the Province of Quebec, prices have maintained for the services of beauty parlours, even after the situation that prices have changed.

MR. GERIN-LAJOIE: Are you talking, in Quebec, about the minimum prices?



MR. MARGO: Yes.

MR. GERIN-LAJOIE: But in practice do hairdressers stick to those minimum prices?

MR. MARGO: They have to.

MR. GERIN-LAJOIE: Yes, but I mean, they stick in the sense they never charge higher prices?

MR. MARGO: They charge much higher prices, but there are always hairdressers -- take in the United States, there are small places with small means where they want to sell their services to a large number of the population and make mass-production. Even those beauty parlours have not changed their prices, because whether they are higher or not, they have lower-priced products.

MR. GERIN-LAJOIE: Part of my question was, isn't it good trade organization, or generally speaking good economy that the hairdressers make more profit if they can by paying less to their suppliers?

MR. MARGO: Sure, that is very good for them, but nobody then has the advantage. I don't think the law means that somebody should get rich while another cannot make a living.

MR. GERIN-LAJOIE: No, but I am putting the question for the general economy of the country, and I would go further and say if the hairdresser gets a 10¢ reduction one day and a year later gets a 25¢ reduction, still you might be able to pass on some of this reduction to the public?

MR. MARGO: Yes, when we would see this in



would be beautiful, but we just don't see it. I have known the operators of beauty parlours for 17 years, and the one thing they do not understand is business, and therefore they are very careful when they use the money they make for their own purposes, and they have the opportunity to make enough money with the charges they are entitled to, and you have to consider that 6,000 of the 7,000 shops we have are girls who know their business with the hair but they have not many business ideas, and you can't just put this over to them, and if they have a chance to take money they take it, but they don't pass it on.

MR. GERIN-LAJOIE: Don't you think there is still competition amongst hairdressers?

MR. MARGO: Oh, certainly, but not so much.

MR. WHITELEY: After all, you are dealing with only one item of cost to the hairdresser, and I assume since 1952 there may be other things, such as rent, which may have increased whereas the minimum prices have remained stable, so I don't think you can draw any deduction on that as to what the position of the hairdresser is now as compared with 1952.

MR. MARGO: I am sure the large beauty shops where there are few operators -- there are few in every town -- take such things into consideration, but when they come to a beauty shop to say, "My amount has increased so much, they don't need any accounting to figure out how





much they make. That is not their point of view. They say, "I make \$150.00 a week and that is beautiful", and that is all, but they don't figure out how much they pay for supplies, or telephone or employees.

THE CHAIRMAN: But if their rent and wages go up they don't make the \$150.00, and they have to raise their rates.

MR. MARGO: That is right.

MR. GOSLETT: They do, yes.

MR. GERIN-LAJOIE: Page 12, the paragraph that begins at the bottom of page 11, but on page 12 it mentions, "such extraordinary circumstances"; I wonder if such circumstances are not ordinarily in a competitive market?

MR. CORLETT: Well, our thinking was that this industry is termed in one part of the brief as a peculiar sort of industry, and they do creep into the economy of the country, I suppose. It is not like the ordinary type of business where you are selling merchandise eventually at retail to the consumers, but where you have this strange situation -- and only people in the business can describe it -- where you have firstly various jobbers resorting to what you would call cut-throat competition, because from the consensus of opinion in this industry -- and I presume they must know -- in the end nobody seems to get very much out of it. Secondly, I say it is peculiar because of the fact that the hairdresser performs a service



to the public for a fee, and receives certain price protection by way of provincial legislation which does not apply as far as any other industry is concerned.

THE CHAIRMAN: Apparently the, don't need very much now?

MR. CORLETT: Apparently not, no.

THE CHAIRMAN: There is nothing extraordinary about a purchasing agent--and you can take the operator of a beauty parlour as a purchasing agent--there is nothing extraordinary about a purchasing agent seeking to get a better price from one vendor than from another.

MR. CORLETT: That is normal procedure.

THE CHAIRMAN: Yes, and in this instance it seems to be facilitated by the fact that not having resale price maintenance the jobber cannot tell him he is not telling the truth when he says he can get a better price.

MR. CORLETT: Yes, and there is no control of branded articles.

THE CHAIRMAN: But that is the normal practice of a purchasing agent -- to get a better price.

MR. CORLETT: On, yes, in that sense I don't think anybody in this industry could blame the operator of a hairdressing establishment. After all, the profit motive is still significant in our economy.

MR. WHITELEY: On page 10 of the brief,



paragraph (c) the statement is made, ". . . serious price-cutting of them by the jobber does lessen the prestige of the product . . ."; is there any evidence of that?

MR. CORLETT: I think the evidence would come from either of my colleagues. I understand that practically all, if not 100%, of every item sold by a manufacturer in this industry sells under a brand-name. The manufacturer spends money and he is selling nationally. He spends money through the media of advertising, and also through participation in national beauty shows which actually are sponsored by this Association. There is one big one every year in Toronto running for three or four days which 3,000 hairdressers attend at the Royal York Hotel. There is one every year in Montreal, and occasionally in Vancouver, Winnipeg and Quebec City, so the manufacturer is always adequately represented at these shows and is spending a considerable amount of his money in order to promote his branded articles, mostly from the quality point of view, and his view is, "I built up a demand." Customers go into a shop and say they want such-and-such a brand of shampoo used on their hair, and if jobbers act up this way they will say, probably, "This product is not so good now". I am speaking of the ladies who go into the shops to have their hair done.

MR. WHITELEY: How do they become aware of this situation?



MR. CORLETT: I think Mr. Goslett could answer that.

MR. GOSLETT: I think that point is right, that price-cutting does have a tendency to lower the prestige of any item.

MR. WHITELEY: Let us confine it to this industry.

MR. GOSLETT: Well, yes, in this industry.

THE CHAIRMAN: If it makes no difference to the ladies who go into these shops, how do they know?

MR. GOSLETT: They ask for products by a brand-name. Brand-names are advertised and they are known to a woman as a certain wave.

THE CHAIRMAN: But she does not know what the operator is paying?

MR. GOSLETT: No, she does not, but the point there is that the manufacturer is not so particularly interested in what the outer customer thinks, but if you go to a shop and offer them a certain item to use at \$20.00<sup>a</sup> a dozen, and after a few weeks you go back and offer the same item at \$16.00 a dozen, and then \$14.00 a dozen, they are going to say, "It has never been worth that".

THE CHAIRMAN: If the ladies who come in keep on asking for it, they will still stock it, won't they?

MR. GOSLETT: Yes, they can do that

THE CHAIRMAN: Well, won't they?

MR. FAVREAU: After a hairdresser has used





one particular kind of cold wave, then he or she will know it is an efficient product, and whatever the price is they will continue to use it, I suppose?

MR. GOSLETT: Yes, they will use it, but if you keep on reducing the price they won't, because they will lose faith in the product.

MR. WHITELEY: Are you conjecturing now, or have you any evidence to support the statement?

MR. GOSLETT: No, I have no evidence to support that that has happened.

MR. WHITELEY: You are fearful of the future?

MR. GOSLETT: Yes, definitely. Selling the good product and sticking to it and sticking to one price gives you prestige as well as the product. To me, as a buyer, if somebody comes in and offers me an item that I am going to resell and they offer it one day at one price and keep coming back and cutting the price I think, "well, there cannot be much to that product or he would not cut the price." For instance, you go into a store and you see some ties at \$2.00; you may see the same tie in a fire sale at 25¢, but you would not go in and buy it.

MR. WHITELEY: What the Commission is interested in is, we would like to have the opinion, but if you make positive statements we would like to know if you have any evidence.

MR. GOSLETT: If you want to go far enough back, I have, definitely. Before I got into this



particular industry I was selling electrical equipment, and among that was generators. I will give you one specific case. We were charging a range of prices from \$125.00 down, and I had an inquiry by mail and I had written them and quoted the price and so on. We were going to put on a big spring drive, and it cut their price by \$10.00, and I immediately wrote to this Mr. Small, who lives down in Quebec City, and told him that the price of the machine he wanted was reduced by \$10.00, and he wrote back and told me, "If it was any good, or as good as you have made me think it is, they not be reducing the price; they would be putting it up", and I lost the sale.

MR. MARGO: I personally think it is very hard to show this in figures or examples -- how a line is affected in reputation by price-cutting. Reputation is only an ideal thing -- you feel it or you don't. However, how can you prove that? The trouble is we have a very limited market; we have only so many customers and they buy what they need and not more, and it is very hard to prove anything like that.

MR. WHIPLEY: If one product went down substantially in prestige or reputation it would cease to sell?

THE CHAIRMAN: If the reduction in price is accompanied by an increase in sales you cannot say it has suffered much loss of prestige. If the reverse is true, then you have something to go on.



I suggest that as a converse to the case you have given -- or, there would be a good many more people who would cancel the order because the price had gone up.

MR. MARGO: Yes.

MR. FAVREAU: Are there any particular instances of one product having been used more than others as a loss-leader in your kind of trade?

MR. GOSLETT: Yes, the tint product.

MR. FAVREAU: Any particular brand?

MR. GOSLETT: Yes, Rioux and Clarol.

MR. FAVREAU: Has that affected their sales?

MR. GOSLETT: No, I wouldn't say it has affected their sales, but it has affected the purchase of them because the price is cut like that, by giving free merchandise, and the hairdresser does not buy as often. She does not use one more bottle just because she gets it for 15¢ less. She only uses the same number of bottles as she has customers using that product, so you don't gain anything in volume that way. What you do is reduce her buying power by giving her two free with a dozen.

THE CHAIRMAN: Unless some other customer asks for it?

MR. GOSLETT: Yes, but they won't ask for it just because she gets two free.

THE CHAIRMAN: Well, she may persuade them.

MR. GOSLETT: Usually they have their customers lined up for those things.



THE CHAIRMAN: Have you anything further to add?

MR. CORLETT: I have nothing further, Mr. Chairman.

THE CHAIRMAN: Thank you very much, gentlemen. That will conclude the hearing.

---A short recess.

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Delegation from: THE CANADIAN ASSOCIATION OF CONSUMERS.

Represented by: Mrs. H. E. Vautelet, C.B.E.,  
National President  
Canadian Association of  
Consumers.

Mrs. V. W. G. Wilson,  
Provincial President,  
Canadian Association of  
Consumers, Quebec  
(English Branch).

Mrs. Grubeau,  
Provincial President,  
Canadian Association of  
Consumers, Ontario.

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MRS. VAUTELET: Mr. Chairman and members of the Commission, I would like to say in the beginning, before reading the brief, that although few people today need a description of what the Canadian Association of Consumers is, it might be just as well to define briefly what we are

The Canadian Association of Consumers is the only national consumer voice in Canada. It speaks at this moment for its ten provincial branches (two of them in Quebec, none so far in Newfoundland) and for the numerous local branches grouped under these provincial ones.

Since consumers are not a distinct group however -- but only so in one of their functions -- and since everyone in Canada is at one moment or other a consumer -- he who sells as well as he or she who buys -- our Association considers it cannot speak only for immediate



consumer interests, but must try instead to speak for the greater good of the greater number and for basic ethics between those who sell and those who buy.

We would like therefore to present this submission of our views not as a partisan voice for one narrow range of economic interests, but as a sincere attempt to speak for the general interests of Canada, since consumers in the mass are Canada.

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"Mr. Chairman and Members of the Commission:

"In presenting this submission the Canadian Association of Consumers wishes first to state that it does not feel competent to assess or find answers to the technical aspects of many of the questions presented in the letter of the Chairman of the Restrictive Trade Practices Commission. These concern, we believe, the retail trade more than they do consumers. Our Association will therefore restrict itself more particularly to those questions affecting consumer reaction to price-cutting practices; to basic principles that may seem to us to be involved in considerations of the present subject and to opinions on the effect on consumers of any major recommendations of this Commission.



We also wish to state that we can offer at this moment no general survey of our members' opinions on 'loss leaders', due to the general confusion that still seems to exist as to what is meant by the term. Few groups even within the trades concerned seem to have come to an agreement as yet between themselves as to what a 'loss leader' actually is, if we may judge by the answers to the questions circulated in November 1953 by the Director of Investigations and Research of the Combines Investigation Act. A general survey of consumer reactions to the problem must necessarily wait therefore until a clearer definition of what the term 'loss leader' implies may be reached.

The Canadian Association of Consumers has, however, twice previously stated its position. In 1951 and 1953, within such limits as information available and its terms of reference as a consumer association allow it to speak. We wish to reiterate these previous statements and to attach to them such additional comments as the interpretations of 'loss leaders', presented in the material this Commission has collected, seems to make desirable.

In its brief to the Joint Committee of the Senate and the House of Commons on Combines Legislation in November,



1951, our Association stated:

"We have also noted the continual reference during your hearings to the danger of 'loss leader' practices and the confusion about what the phrase 'loss leader' means. All too often, it seems to us, your witnesses have used it as meaning what we call 'healthy price competition'.

"Statements that have been made about 'loss leaders' seem to us to be deliberate exaggerations of the problem. But we recognize that there may be legitimate fear on the part of some small retailers lest bigger organizations with greater resources deliberately try to put them out of business by a predatory price-war. If this danger exists, we would draw your attention and threats to section 496A of the Criminal Code. It makes it an offense:

"To engage in a policy of selling goods at prices unreasonably low for the purpose of destroying competition or eliminating a competitor".

We realize this section has been changed and amended since then, but as I am quoting from a previous brief I have the quote as it is.





"We would have no objection to any strengthening of the law which may be considered necessary to prevent this or any other means of destroying competition. But in order to prevent predatory attempts by bigger organizations to ruin a smaller one, we cannot conceive it necessary to destroy price-competition at the retail level".

Later in the same brief we state that predatory price cutting is the only meaning we can give to the term 'loss leader'.

In January, 1953, in answer to a letter from the Director of Investigation and Research, Combines Investigation Act we re-stated our position in more detail as follows:

"The particular form of 'loss leader' practice that seems to us to be immoral and against the public interest is that whereby a financially stronger competitor sells at a loss as a means of putting a weaker competitor out of business.

"All means of eliminating competition, except those of offering better services or superior goods, is against the best interests of the consumer, and hence of the public.



Any 'loss leader' practices which create small monopolies in the local trades concerned and which reduce public freedom of choice, thus exposing the public to monopoly prices should be curtailed.

"We feel that any price cutting carried on long enough, and at a low enough level to make competition impossible for shops, etc. with lesser financial assets, represents the type of 'loss leader' practice Canada should ban. This should not include lowering of regular prices on special articles obtained at wholesale rates by means of larger orders or greater volume of sales, nor should it include the normal savings to be gained from lower overhead or greater sales volume, as in chain or department stores, family businesses or otherwise low-expense enterprises. These represent legitimate merchandising methods that operate to the good of the consumer and are a challenge to the business concerned.

"Any prolonged or systematic price-cutting, where reasonable profits are foregone without very adequate reasons for such behavior, should



be suspect, however, and could be considered an attempt to create a monopoly in the district in which it occurs. This monopoly is a form of restraint of trade and should be deemed unfair practices'.

"This remains our position today in reference to the one use of 'loss leaders' we see as prejudicial to the public interest when the policy of selling at cost or below cost is used as a weapon to freeze out competition. The Canadian Association of Consumers joins with retailers and producers in condemning the practice. As we have suggested, however, such a practice is already defined as an offense by the Criminal Code, and this section could be strengthened if it does not suffice to cover the abuse outlined.

"'Loss leader' as a term to be applied merely to the willingness of a retailer to take a smaller profit in exchange for a larger turnover, represents to us a legitimate business practice, offering legitimate advantages to consumers of which they should not be deprived.

In this connection we feel that certain interpretations offered for the term 'loss leader' should cause concern to those interested in retaining a free



competitive economy. An example we wish to quote is the interpretation of a 'loss leader' presented by a retail voice in the answers to the questions posed last year by the Director of Investigation and Research of the Combines Investigation Act. We quote here only the final summary to save time. It says:

"In a broad sense a loss leader might be defined as the offering for sale by a merchant of goods at prices which do not encompass costs, plus a gross margin sufficient to cover efficient distribution, in order that he may attract to a store customers who otherwise would not come. The offering might not be below costs, but the gross margin would be less than cost, plus a gross margin sufficient to cover costs of efficient distribution for that class of goods'.

"It seems to our Association that such a definition - if accepted and made the subject of legislation - would establish a minimum sales price system as arbitrary as resale price maintenance at its worst. Our Association is also puzzled by the implication that seeking to attract customers who otherwise would not come is not a





legitimate objective. Would not such an interpretation of the very purpose of merchandising tend to rule out advertising or generally most of the present methods used to attract purchasers? We feel that the broad meaning given to the term 'loss leader' should be viewed with concern.

"Since we have just had occasion to mention Resale Price Maintenance may we state our regret at the use now being made of the present interest in today's 'loss leader' issue as a cloak for renewed efforts to recover outlawed, price-fixing privileges. Such a use could mislead the public by confusing two very distinct questions and could equally prejudice the cause of those who may genuinely require additional protection in law against predatory price-cutting, since the claim made that a cure for one ill lies in another and even greater ill, is of a nature to shake confidence in even the best of causes.

"Two of the questions asked by this Commission, in its invitation to present opinions and facts before the present Hearings, dealt directly with consumer reactions. In the first case the Commission looked for information as to the possible reputation and acceptance of a 'loss-leader' article among the consuming public. In the



other is sought opinions as to the general effect of 'loss-leader' practices upon consumers. These questions have since been broken down for us into ten more specific ones, which we now try to answer.

"Question 1.

"Are consumers misled when prices on particular items are reduced in one store below the prices of other stores into believing that all articles in the first store are similarly reduced?

"Answer:

"We do not believe so. We have seen the suggestion in some of the answers to this Commission's inquiry of last year that consumers are deceived by sharp price-cuts on one item into believing all other goods in the stores are equally reduced in price. We are obliged to question the logic of such thinking. It is hardly complimentary to the intelligence of the average customer. When a retailer gets a bargain on one item of a manufacturer's stock does he believe all that stock is also going at reduced prices? If the average consumer were not keenly aware of actual values and prices how would a 'loss leader' item lure them, and where would be the incentive in price-competition between merchants?



"Question 2:

"It is sometimes stated that stores offering ver., low prices on particular items mark-up other articles in the stores beyond the going level in other stores to compensate for reduced margins on the first group of items. Against this it is stated that the very low margins are compensated for, not by increasing margins on other products but by attracting a greater volume of business. In stores offering particular items at ver., low prices, have consumers found that the prices of other products in the store are generally competitive with other stores or do they tend to be higher than the prices of such products in other stores?

"Answer:

"We could not answer this categorically without a far wider survey than circumstances have made possible at the moment. There seems reason to doubt judging by a brief survey of the opinions of a few of our nearer branches that any mark-ups in prices on other products occur in any significant way as an accompaniment to profit-cutting on one particular article. Since a slashed price on some special product is usually an advertising stunt to draw customers to the store, the process would defeat itself if it were too



frequently accompanied by raises in prices of the rest of the stock. Consumers are sharply conscious of prices and such procedures would almost certainly have been drawn to our attention if it were at all usual.

"Question 3:

"Do price reductions or 'loss-leader' selling damage the prestige of an article?

"Answer:

"We doubt if this is so, at least to any significant extent. When a branded product gets consumer preference, it is logical to believe that this choice is not predicated on price alone. - since non-branded articles are usually cheaper - but rather on its known quality or alternatively its more efficient promotion. It is hardly in human nature, we believe, for consumers to reject an article on which these two factors are maintained, merely because it is selling at a lower price. Moreover, memory of previous prices is usually short-lived except where the difference is dramatic - as with food now and thirty years ago.

"Question 4:

"Has there been any noticeable deterioration over the past year or so in the quality of those goods which have





particularly subject to active price competition, e.g. electrical appliances, cigarettes, bread?

"Answer:

"We have had no experience that would indicate that such a deterioration has taken place. The most frequent complaint from our members across Canada is that active price competition in the one-time price-maintained fields, is still merely a whisper on the horizon. Since the present law against price-maintenance which theoretically returned articles such as mentioned to active price competition does not prohibit manufacturers 'suggesting' their preferred resale prices to a retailer; and since many retailers who benefited from resale price maintenance may be supposed to be humanly not averse to accepting such suggestions, a wide area of our members consider that though the principle of price maintenance is outlawed, the practice is voluntarily still widely existent. Complaints also reach us as to what amounts to carelessness at best and flouting of the law at worst by manufacturers who cite retail prices in their advertising, even on television.

"Since we realize that changes in merchandising practices cannot be made



overnight, without damage to our selling structure, and since we also realize - and have so informed our members - that the resale price maintenance law does not outlaw suggesting price but merely punitive action against those who are not willing to accept such suggestions we have urged patience on our members while this new freeing of prices worked itself out into a realization by retailers that they also were free.

"Since however active price competition among such articles still seems sporadic, as far as consumers reporting to us are concerned, there would seem to be little reason for deterioration in the quality of the articles concerned. In any case deterioration must take place at the manufacturing level. The percentage of profit a retailer is willing to take after the manufacturer has been paid and his product is no longer his, should logically not affect the quality the manufacturer builds into his wares as a means of meeting competition from other manufacturers. Why should he lower this quality, his chief selling point, because his retail outlets are willing to trade lesser mark-ups for larger turnovers?



"Question 5.

"Are consumers confused by and do they object to a variation in prices among different stores?"

By the way I brought it up in the series of annual meetings that cover about 20 to 30 branches.

"Answer:

"We have often heard the suggestion that consumers generally prefer uniform prices for well-known branded articles. This question has come up occasionally at some of our consumer branch meetings. On these limited occasions only a very few members felt that the advantage of a price they were used to outweighed the benefits to their budgets of free, competitive pricing. It seems to us logical that the mere habit of buying at a pre-known price should take a poor second place to the human taste for a bargain and the natural desire to get the most for one's money; which are the very tastes that make 'loss leaders' a source of sorrow to the retail trade.

"Question 6:

"In order of preference what are the efficiencies that appeal most to the average consumer, e.g. price efficiency, service efficiency and so on?"

"Answer:

"We are aware that manufacturers



of certain consumer goods claimed that service efficiency was an adequate substitute for price efficiency. Most consumer durable goods of the type requiring servicing have now reached a high order of performance and do not require servicing for a long period after they are bought. The consumer usually gains by benefiting from price efficiency caused by price competition and by paying his own service charges as required. Since service efficiencies must at best be a speculative value and at worst is an intangible dependent on individual consumer requirements and individual manufacturer or retailer efficiency and as price advantages are neither intangible nor speculative to the consumer at least we have no hesitation in saying here that price efficiency leads service efficiency by a wide margin.

"Question 1:

"After certain products have been sold at very low prices or as 'loss leaders' for a time, do consumers have difficulty in finding them stocked in what were previously normal outlets?

"Answer:

"We can give no certain answer to this question. The situation has not occurred where members of our organi-





zation were in a position to notice it and report it to our attention.

"Conditions in Canada vary widely however and we are not prepared to say it might not occur. We feel however that such occurrence would be largely local and sporadic. It might arise where a dealer makes a quick killing by obtaining some well-known article in large quantities at greatly reduced prices and unloads in one large sensational sale, thus reducing the sale value of the same article in normal outlets. Since it is the manufacturer or jobber who is responsible for allowing the favored price to one outlet that make such a practice possible, he must bear the onus of the temporary damage that may be done to his own product and for reducing other retailers' interest in it. We see no reason in such a case for protecting such a manufacturer against his own or his jobbers' shortsightedness.

"Question 8:

"Does the average consumer wish to find price competition among retail outlets or is he satisfied with a standard price and competition in respects other than price?

"Answer:

"In answering the question on



consumer preference where price or service efficiencies are concerned, we have partly at least answered this latter question. If more is needed we would draw your attention to the only form of competition that seems to occasion alarm in the selling field. We hear no voices raised to ask for protection against service competition or other forms of competition such as quality. Government is not urged to put a floor to other types of sales-challenge. It is price competition alone against which various groups who must meet it cry out and from which they seek protection. If the consumer could be trusted to remain satisfied with standard prices and merely other and lesser forms of competition this pre-occupation of Trade with price-competition would hardly be justified.

"The Canadian Association of Consumers is on record in its belief that price competition is with quality competition coming second - the form of competition most vital to the maintenance of a free economy and to the protection of consumers against exploitation. Competition breeds inventiveness and ingenuity and price rigidity kills it. Not even quality competition and certainly not the limited factors of service competition could have produced the standard of living now enjoyed



in Canada and which was built out of the painful necessity to produce better goods for less money than one's competitor or perish economically.

"Question 9:

"Have your members experienced any difficulty in obtaining the degree of service that was promised or implied when they purchased so-called technical goods such as electrical appliances at reduced prices?

"Answer:

"We have had some complaints reported to us on the failure of 'implied services' in the field of television. Service efficiencies rest to a degree on the dependability of one's available employees, however and this dependability is usually less satisfactory in a full-employment period. To this extent we would think an occasional lowering of past standards in service efficiency may be encountered irrespective of price-cutting. We cannot see how such service efficiencies could have deteriorated in the very brief period of present occasional reductions in prices, through this one cause alone. It would imply a rather complicated co-ordination of lowering of prices and immediate reduction of either the number or the quality of service personnel that would be rather hard to achieve.



"Question 10:

"What are the most important factors in the introduction of a new article e.g. price, advertising word of mouth recommendation and so on?"

May I say here we arrive at these conclusions through questions thrown out to various meetings across Canada from Victoria to Prince Edward Island. I have this year toured every one of our provincial branches, and I have sent out a series of questions when I met them to try and get an idea. It is an easier way than by a questionnaire, which is usually only by a selected number of the consumers.

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"Answer:

"Answers to this question must vary as widely as the incomes in Canada. The reduction of a thousand dollars on a Cadillac's price has no importance to the average budget, while a saving of 10¢ a pound on meat has.

"Where basic, and regular though not basic, commodities are concerned, price is usually the major factor, and word-of-mouth recommendation often clinches the sale. Price for most consumers still appears to be the dominant consideration, since it seems to focus, in our experience, the greatest amount of consumer resentment and consumer interest. However, where a





brand new idea as against an improvement in an already existing article is put on the market, advertising may override price in assuring its acceptance.

These are the questions we have been specifically asked to answer. Three additional questions puzzle our Association, which we would like to draw to the attention of the Commission. These are:

"1 - We are puzzled at the limitation of all debates on the definition and possible evils of 'loss leaders' to the retail field alone. Do not some of the definitions of this practice which have been brought to our attention apply equally well to some manufacturers' merchandising habits. If cutting prices below one's competitor's idea of 'efficient distribution costs' is alleged to be wrong or to be unfair competition, what about such practices as 1¢ sales, where the reduction in margin or profits is often borne by the manufacturer or those new items which are introduced through a manufacturer's authorization to sell at lower or non-profit prices for the period of introduction?



If 'loss-leader' legislation is contemplated the Canadian Association of Consumers suggests that such legislation should logically apply to the offense itself, as finally defined, not to merely an area of merchandising in which it is committed. In other words, should not legislation against a practice deemed unfair apply all across the board in the 'selling' picture, or not at all? In such cases should we not move with infinite care so as not to regiment completely our selling and buying system, remove much freedom of promotion from our trade and industry and exploit consumers through a wide reduction in price-competition? If we do not apply such legislation to all categories, however, how shall we justify, in principle removal of the right to determine one's own profit needs from retailers alone and not from other groups?

"2 - The second question arises from some of the cases cited widely as examples of predator, 'loss leaders'. Today's problem of the small tobacconist, in competition with larger and stronger outlets such as chain stores is



one illustration. Our Association is genuinely concerned over the plight of small retailers faced with the massive and growing threat of large, often multiple-store competitors; but should not the remedy sought look to the cause of the problem, not merely to legislative ways and means of sheltering from it?

"In just the material alone collected by the Restrictive Trade Practices Commission, there is considerable evidence that the larger outlets which undersell the small tobacconist are not in the majority of cases selling below or at cost but merely benefiting from their ability to take smaller profit-margins because of greater volume of sales, and from favored prices granted by manufacturers. There is also evidence to show that attempts on the part of small, narrow retailers to obtain the same favorable prices have been rejected by manufacturers, who are therefore a strong, contributory factor in the plight of their own smaller retail outlets.

"Is not this and similar perils for today's small retailer a problem



created to a great extent by the trade concerned, and which should be solved by that trade, rather than by legislation that merely relieves the trade concerned of the need to find its own answers to problems created by themselves by handing the bill for direct relief of the situation to the consumers of Canada?

"If the manufacturer has no concern and feels no responsibility for keeping his smaller outlets functioning; if he is willing to see them forced out of business, at the possible risk of finding himself ultimately dependent only on the bigger organizations without alternative outlets, should chain stores, etc. be forced to take higher mark-ups than they feel they need and consumers be required to pay more than is equitable simply so that a policy enacted within the trade in question may remain painless to all parties concerned except the consumer?

"3 - A third question that puzzles us - should a wide interpretation of the term 'loss leader' win the day, is the effect of forbidding lowering of profit-margins on the small





retailer himself, in whose name this protection against 'loss leaders' is frequently requested? If the small store cannot fight off large store competition by - among other media - special sales will it not be further handicapped in its efforts to retain customers? The close-at-hand, local dealer has a strong appeal to the average consumer. Given the additional advantages of the occasional offered sales margin and provided he can offer a modicum of the convenience in arrangements of wares and visible prices that form part of the attraction of chain stores he may perhaps hold his own in the end against the new efficiencies challenging him. But if he is denied the promotion weapon or special sales shall he be destroying, perhaps the delicate balance of his very small advantage?

"These are questions our Association feels may need to be considered in arriving at any conclusion as to what constitutes a 'loss leader' and what should be done about them. To date, in the words of the Federal Trade Commission of 1945, 'the subject of 'loss leader' selling seems to be surrounded by considerably more emotionalism and wishful



thinking than actual information'. The Canadian Association of Consumers welcomes this Commission's efforts to remove the emotionalism and promote actual information on this subject.

"Sheltering from competition, however usually means sheltering from progress. The Canadian Association of Consumers feels it must oppose any definition or recommended action against 'loss leaders' that represents merely protection of retailers against competition, when that competition is not predatory.

"Where use of cut prices becomes in its turn a means of destroying competition, however, we endorse any necessary and fair strengthening of legislation that may be needed to police such practices.

"In the report of the Royal Commission on Price Spreads we find a definite that fully covers our attitude, at this moment, towards this complex problem. It is found on pages 228-230 of the Report and is also quoted on page 230 of the material collected by the Restrictive Trade Practices Commission. It says:

"We suggest that practices should be prohibited as unfair, which are characterized by bad faith, fraud, misrepresentation or oppression;"



we have always considered that the resale price maintenance system was oppressive, even if disguised.

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"! . . . which are resorted to for the purpose of destroying competition; which facilitates the development of monopoly; or which destroy fair competitive opportunities and prevent the survival of those who can organize and carry on the production of goods most efficiently. It is in this sense that the word 'unfair' should be used."

"The Canadian Association of Consumers believes that it is in this sense that a definition for the practice of 'loss leaders' should be sought.

"Respectfully submitted".

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Could I add a word?

THE CHAIRMAN: That is just what I was going to say: If you have any further comments or observations to make concerning the brief, and would like to make them now, please do so.

MRS. VAUTELET: Only very briefly I would like to state we have prepared this brief strictly within the terms of reference given us by the Commission. Since then we have seen the debates brought more and more into the field of price maintenance privileges.

If -- following the pressures exercised to



this end -- the present hearings bring about a decision to re-examine the ban on the right of manufacturers to institute their own price-fixing system of law and punishment, could our Association be authorized to submit its views on this new matter at the final hearings of this Commission in Ottawa, should we so desire?

THE CHAIRMAN: I think I can say that there will be no question about that, that your organization in common with any others who desire to do so, whether they have presented a brief to us or not, will be given an opportunity at the final sessions of the Commission at Ottawa to present any further material they would like to bring to us -- at least, as far as is relevant to the matters under discussion.

MRS. VAUTELET: May I say this last remark is because the question has been transposed a lot. We did not feel justified in preparing our brief in dealing with a matter which ended by law three years ago, but we have a high stake in the issue which has been brought before this Commission, and would not like to be left voiceless in serving a rebuttal to some of the arguments presented.

THE CHAIRMAN: Would either of the other ladies care to say anything at this time?

MRS. VAUTELET: No.

MR. GERIN-LAJOIE: I would like to put very few questions, if you would not mind answering them, please. Looking at page 7 of your brief you





refer to the present practice of the manufacturers suggesting prices: Would it be your recommendation that such a practice should be prohibited by law or not?

MRS. VAUTELET: Mr. Chairman, I would like to leave that in the hands of the Commission and the Government. Actually, the feeling of the upper level of the Canadian Association of Consumers -- and I think you will understand we are in the process of carrying on a work of daily education which means in complicated matters like this the rank and file have not a very strong opinion, beyond the fact they want immediate relief -- and the feeling of those who have studied the matter is that we did not like the idea of breaking the dam when you can drain off the water. We also feel that in many districts the small dealer has grown up under an umbrella he should not have had; it is an offense against the economic principles of this country, but one he has always had, and therefore we have not unduly pressed for too harsh an application of the principles we are fighting for. Legally, we feel that suggesting prices has the same effect as commanding them, but at the same time we don't want to take away from other hands anything as to the strengthening of the law. Ultimately I think it will have to be strengthened.

MR. GERIN-LAJOIE: Do you think in practice it has the same effect?

MRS. VAUTELET: We must judge here by the



reports coming to us from across the country. We are getting it in the neck almost continually -- complaints that advertisements come out in which the resale price is quoted by the manufacturer. I have an idea somebody must say a word of warning here, because they come out for a short time and then disappear. Also, it may be that the consumers are going around with a notepad and noting prices, and they find such a remarkable similarity in prices they can come to only one conclusion, and we have to agree with them that the average retailer greatly benefits from the resale price system, not so much the manufacturer.

THE CHAIRMAN: There is another angle to it, that in many industries the retailer has become accustomed to think of a certain mark-up on the retail cost, or a certain margin of the selling price as being normal or requested for the proper and reasonable carrying on of his business, and he has associated that, perhaps, with the fact that prices which were formerly maintained allowed something like that mark-up, and he continues in the belief that is a fair proportion, and whether the price is actually suggested to him or not, he is apt to work on that.

MRS. VAUFELET: What the consumer wants is, if there is any suggestion from the manufacturer, why should all the retailers she deals with, being accustomed to the price down to the exact cent, vary in every retail store she goes into in some



fields.

MR. GERIN-LAJOIE: Looking at page 10 of your brief you refer to the service given by retailers, would it be the opinion of your Association that it might be better to have a separate charge for service, like on T.V. sets these days -- to have that practice generalized?

MRS. VAUTELET: I have to answer from the experience and opinion of a handful of our top officers who have discussed it, and they feel that, generally speaking, a very small number of consumers take advantage of the included services that go inside the price. Most of them do not, unless the article is defective from the start, in which case it is not a question of included service. Most of them do not turn to the store for service for a year or more, and in many cases after a year or more the services are not always available except in very large outlets. Moreover a majority of consumers we believe -- we have not made a survey on this, but look only to ourselves as average housewives and tested against a few other housewives -- we believe an average housewife prefers, in many cases, particularly if she is near a store, to call in her own known service personnel to take care of the electric ice-box or other things like that. In cases like quite large stores like Eaton's, and so on, certainly a majority of people buying there would turn to those stores first. Over the



whole country we think the number who turn to the store is rather small.

THE CHAIRMAN: Do you think with regard to many lines of articles for which service is normally included that the consumer would prefer to have a lower price, eliminating the service, and to buy the article without the privilege of service and gamble on not having to pay as much for any service required?

MRS. VAUTELET: I think emphatically that is the position. There will always be the few exceptions. We find that most of them who have husbands in the business tell them it would be a good idea.

THE CHAIRMAN: Are you suggesting ladies are influenced by that?

MRS. VAUTELET: We are only a few hundred years out of the harem, and there are still a few of us. I have taken the privilege, Mr. Chairman, to enquire each time, and recently I was speaking to 400 consumers, and one woman was emphatically in favour of returning us to resale price maintenance, and that meant 399 were not, and I enquired afterwards as to her background and found that marital influence had shaped her thinking. Emphatically I say the overwhelming majority of consumers prefer a lower price today and to take their chance on repairs tomorrow. Among other things consumers are not necessarily brighter than the rest of Canada, and they have a natural





suspicion they are not getting full value if what they are getting is apparently free. They won't make the calculation from the past. For example electric irons; they bring it back a year afterwards and they have more or less forgotten that the purchase price included servicing, and they feel they are getting quite a favour from the company and they don't place as much confidence in it as if they were paying for it at the time they brought it back.

THE CHAIRMAN: Some type of equipment, the guarantees run longer than that in this country?

MRS. VAUTELET: I think it is a question of size, Mr. Chairman. The larger it is the longer the guarantee runs. If you had an elephant it would be served for a long time. At the end of a year, as a result of very strong mental effort, I remembered once on an iron that I had that that service was owing to me, but many people don't make that effort, and they don't put the same trust in it as if they went out and paid for it.

MR. GERIN-LAJOIE: At the top of page 11 you refer to the promotion of new articles put on the market by manufacturers: Would you have any idea of how important are demonstrations at homes by retailers in the promotion of the articles?

MRS. VAUTELET: I think this is a question of personality. Many consumers I know would rather have anything in the world -- even a toothache -- than a home demonstrator. Others



love it. I remember when a certain type of cooking utensil was being demonstrated and the demonstrator cooked a meal free for all the guests the housewife wanted to invite; that was a most popular form among many women. She provided the food, but for one day she was out of the kitchen. Vacuum cleaner demonstrations seem to annoy the women, who have spoken to us, more than anything else. This is a matter in which a woman is free to refuse or accept, and it seems to me there are very legitimate means of trying to show how good wares are. I am judging here from remarks passed to me across Canada, and in this case it happens to be just vacuum demonstrations, and that they were being oversold and high-pressured and being manoeuvred into the position where they would have a carpet cleaned and therefore they owed something to the company. Therefore, I would be very uncertain in giving an answer to that. I would say you could divide the consumers about even in that matter.

MR. GERIN-LAJOIE: I refer to the bottom of page 12, and I just wonder if you would have any examples of attempts on the part of small retailers to unite and get better prices from manufacturers -- instances where retailers actually succeeded in getting better prices?

MRS. VAUTELET: Mrs. Wilson is just suggesting to me that we had a case quite recently, but I don't think we can really quote it. I will



mention what it is; In this case small retailers throughout a wide area are suffering from competition where an article was sold in a chain store at 6¢ less than they were charged to buy it from the jobber. Small retail outlets are at the present time trying to see what chance they have of approaching the producer to point out that what is being done to them is the same as the small tobacco outlets. It having only got to the debate stage, we cannot put it forward as an example. out in this little book, "Restrictive Trade Practices Commission" (which I would like to say here, so as to get credit from my Association, I have read from cover to cover) there are facts and figures given of the effort of the small tobacco-ist in Manitoba to get some kind of co-operative system of buying so they can have the same advantages as the larger outlets. So there has been in that case a definite attempt on the part of the heavily penalized smaller outlet to work up a more efficient system of buying.

MR. GERIN-LAJOIE: You would not have any examples of cases where the retailer has actually succeeded in uniting and getting better prices?

MRS. VAUTELET: No. Perhaps the Commission might have some. We feel that one of the results of this penalizing or harshness inflicted on the small retailer may be to pressure him into discovering ways and means of meeting the competition through a more efficient buying.



system, and it may in the long run prove a benefit to those who can meet it and survive.

MR. WHITELEY: Among the arguments put before the Commission, particularly in regard to electrical appliances, has been that the reduction in price which is applying on those appliances having wide consumer acceptance already, is depriving the manufacturer of the opportunity to promote the sale of other lines which have not yet been widely accepted by the public. For example, contrast is made between the sale of ordinary washing machines, which are now standard in most homes -- at least, have been accepted generally -- and the sale of automatic washing machines which are yet sold only on a relatively small volume, and that the consumer will suffer in the long run by reason of the fact that the dealer is unable to devote the effort to build up volume in those lines, and thus a manufacturer cannot expand his production and eventually produce the article at a low enough price to get a wide market. Has your Association any opinion as to how the members make up their minds to purchase -- whether it is through this very extensive form of promotion?

MRS. VAUTELET: I gather that you are asking if we have information as to what motivates a consumer in making an expensive purchase like an electric washer.

THE CHAIRMAN: A new type of product.





MRS. VAUTELET: The money they have, first of all; and the manner in which their appetites have been excited by promotion plays into it very heavily. Thirdly, that is why I said that with a new type of product often word-of-mouth does a lot. Your neighbour has had one and tells you. My daughter changed her mind twice in two cases because neighbours had found defects in different brands, and therefore word-of-mouth determined to a great extent which one she chose. She had to choose it in her price range and according to the experience of her friends. Just the pure exciting of appetite played a part in the picture. I do not quite get the argument of the manufacturers that cut prices in the goods they have already sold and which they have had the money they asked for, that cut-prices at the retail level after the goods no longer belong to them, can interfere with their promotion of improvements in design.

MR. WHITELEY: One of the examples was the automatic dish-washer. I think in Toronto representatives of one group said if you went out and offered them at a ridiculous price -- perhaps \$150.00 might be ridiculous -- he said even if you did that consumers would not be willing to buy because they had not yet been told by the individual dealer demonstrating, and so on, the great benefit she would get from the purchase of that article, and it is only by



building up that feeling in a wide area that the manufacturers hope to persuade dealers.

MRS. VAUTELET: Of course but in many cases there is a built-in dish-washer in the form of a husband. Is this the contention, that if retailers could sell other articles at a higher price they could then promote the dish-washer more efficiently than they are doing now? Isn't it to their interest, to the interest of the manufacturer, to promote it as efficiently as possible so he can sell the article? Consumers don't see the connection, and certainly in the case of 75% of the manufacturers, his article ceases to belong to him the moment he sells it. He can ask the price he hopes to get, but what happens to it afterwards cannot possibly affect the efficiency of promotion with which he surrounds the next article he is producing.

MR. WHITELEY: Not he himself, but the dealer; the dealer is deprived of sufficient income to feature something new and therefore fails to build up the market the manufacturer needs.

MRS. VAUTELET: May I make a rather sad confession: A large number of consumers do not listen to the build-up or information when they are out to buy something. There have been some instances brought to our attention where labels have been torn off dresses because the consumer was too busy to look at the instructions. The same applies to electrical appliances: Most of



build-up I think gentlemen, particularly with new things like a dish-washer, has usually been done by the manufacturer and the retailer simply explains how it works when you go to buy it.

MR. WHITELEY: There are many cases where the manufacturer or the dealer has gone in to wash clothes, etc.

THE CHAIRMAN: We had an actual manufacturer, who had a fairly important position and it was only last week he put on a demonstration of washing clothes himself

MRS. VAUTELET: With all that work in promotion he feels that the lowering of the price of the machine will be a hindrance rather than an advantage?

THE CHAIRMAN: The way the manufacturer put it is this: When they have a brand-new product in addition to the advertising which they do themselves they feel that they need a build-up through the dealers, and that they need that through a very widely spread number of dealers, and that in the first stages of the introduction of a new product the dealers who do demonstrations and who allow space on their floor for that purpose expend funds which are not in any proportion to the results they get. Then they say to the manufacturers, "After we have done this and the new article has received a fair degree of acceptance along comes a price-cutter and takes all our profit away". For that reason they say the



dealers frequently refuse to assist in the promotion of a new product.

MRS. VAUTELET: Mr. Chairman, one thing that has intrigued many consumers in our Association is, how does the price-cutter benefit from his price-cut -- he has to live for more than six months or a year -- unless he has access to the same goods at a cheaper price, or unless his greater volume of sales makes it profitable for him? Where is the inducement? If there is greater volume, we don't know, but if there is greater volume and it is more profitable, isn't he giving an example to the others of the way out of their problem? If the greater volume is not responsible for the lower prices, the only way he can live must be by getting favoured prices from the manufacturer. There may be other ways, but to the uninitiated consumer this is a problem which has come up for us. We cannot see human beings just over the love of the consumer putting themselves out of business.

THE CHAIRMAN: We are told some of them make quite a substantial profit.

MRS. VAUTELET: We have had suspicions of the matter and our suspicions may be exaggerated. One of the things we have to touch on as we go along is that the business of selling is not as vastly profitable as a lot of consumers think, but in the matter of cutting prices we have this perplexity: There has to be a justification for





anything a human being does or he will go bankrupt. We can see no justification for cutting prices other than by greater volume of sale or by access to cheaper goods. There may be others and we would be interested if the Commission would let us know.

THE CHAIRMAN: There is one more question and it comes in connection with question No. 9 and the answer on page 10 of your brief. We have been told that there are a few large operators as price-cutters, particularly in Montreal and Toronto and we have been told there are several in Montreal doing business to the extent of over \$1,000,000.00 in appliances, and several in Toronto, one whose sales last year were reported as being well over \$4,000,000.00 a year, and we were told with regard to price-cutters of that type that it is impossible for them to provide the service which the manufacturers and others think necessary, and that they are not providing that sort of service. I was wondering if through your members you have had complaints dealing with that type of dealer any more than any other type of dealer?

MRS. VAUTELET: We have had no complaints of any sort except in this one field, in the field we are coming into -- I must say we do get complaints very quickly if anything seems to go wrong; we get so many, but I can say that 60% are unjustified. In this field we have studied



all the complaints we have had, but we have had complaints on implied service, and not on promised service -- what some salesman may have said -- in the field of television alone.

THE CHAIRMAN: I think in television they don't believe in a service -- you pay extra for it.

MRS. VAUTELET: The consumer took it for granted these services were implied. Our answer is that they had no proof the services were promised, and therefore there was no complaint. This was the feeling, and that they were gypped, and consumers make mistakes like anybody else.

THE CHAIRMAN: Thank you, Mde. Vautelet. We appreciate your coming, and the lot of effort you have put forward to present this brief.

We will conclude now and meet again tomorrow afternoon at 2 00 o'clock.

---The hearing adjourned until 2 P M. tomorrow.

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RESTRICTIVE TRADE PRACTICES COMMISSION

LOSS-LEADER SELLING

TRANSCRIPT OF EVIDENCE

Vol. 11

MONTREAL

JUN 10 1954



RESTRICTIVE TRADE PRACTICES COMMISSION

IN THE MATTER OF

an inquiry

Regarding Loss-Leader Selling

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Hearing held (in public) in Hearing Room

No. 2, New Court House Building, Montreal, Thursday, June 10th, 1954.

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PRESENT:

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.,	Chairman.
Guy Favreau, Q.C., B.A., LL.B.,	Member
A. S. Whiteley, B.A., M.A.,	Member.

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APPEARANCE:

Mr. Paul Gerin-Lajoie - Counsel for the Commission

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REPRESENTATIONS:

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The Music Bar Incorporated Represented by: Mr. Abe Crelinsten	1773
The Radio-Television Manufacturers' Association of Canada Represented by: Mr. Stuart M. Finlayson, Chairman of the Committee Mr. Harry Marpole, R.C.A. Victor Company of Canada, Montreal Mr. F. G. Samis, The Northern Electric Company	1803
Genin, Trudeau & Cie Limitée Represented by: Paul Trudeau Paul Dubuc L. P. Fournier.	2201





MONTREAL,THURSDAY, JUNE 10th, 1954

THE CHAIRMAN: The hearing will come to order. before hearing any representations this afternoon we have been asked to read a letter from Mr. Gorfinkel who, as honorary President of the Retail Tobacco Association of the Province of Quebec, presented a brief the other day. The letter is written because of certain comments in the press which he thought might give a wrong impression by attributing certain viewpoints to the Association, which were really his own and not those of the Association. I don't think I need read the entire letter because part of it is merely asking for a copy of the evidence as taken.

"The reason for the above request is actuated by the article which appeared in the Montreal Herald on June 8th and gave the impression to their readers that our brief was based on criticism of the Tobacco Manufacturers as a whole and their methods of handling the small retailers. Furthermore, that the only exception was the firm of Benson & Hedges Ltd.

"If this was the viewpoint of this newspaper of the evidence I gave under cross examination, when at the conclusion of a certain question I added my personal feelings which had nothing in common with the brief itself, this newspaperman



evidently missed the full presentation of the brief or was not giving an attentive ear to the proceedings. Otherwise he would have gathered that the manufacturers were not under fire by the Retail Tobacco Association as the heading blared forth on the report he gave to the proceedings."

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I am just reading that so that the matter might be clear and Mr. Gorfinkel wishes it understood that any comments made about the manufacturers were his own personal comments and were not intended to be attributed in any way to the Association for which he was speaking. The Association did not make any such expression of views; there was no such expression in the brief, and that comment was his own.

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Delegation from: THE MUSIC BAR INCORPORATED.

Represented by: Mr Abe Crelinsten

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THE CHAIRMAN: The first presentation this afternoon is on behalf of The Music Bar Inc.

Mr. Crelinsten, is it your desire to present any written brief, or make an oral statement?

MR. CRELINSTEN: I have no written brief.

THE CHAIRMAN: Do you wish to make a statement yourself?

MR. CRELINSTEN: I assumed there would be questions to be asked, and I was prepared to answer them.

THE CHAIRMAN: I just wondered which procedure you preferred to follow.

MR. CRELINSTEN: I prefer questions and answers.

MR. GERIN-LAJOIE: Mr. Crelinsten, in what business are you?

MR. CRELINSTEN: Retail merchandising of electrical appliances and records

MR. GERIN-LAJOIE: Are you operating the business under your own name or a firm name?

MR. CRELINSTEN: Firm name; Music Bar Incorporated.

MR. GERIN-LAJOIE: What is the address?

MR. CRELINSTEN: 5172 Decarie Blvd.

MR. GERIN-LAJOIE: Near what crossing



street is it?

MR. CRELINSTEN: Queen Mary Road.

MR. FAVREAU: What is your status with the company?

MR. CRELINSTEN: Secretary-treasurer.

MR. GERIN-LAJOIE: What is the main business of your firm?

MR. CRELINSTEN: Electrical appliances.

MR. GERIN-LAJOIE: In general?

MR. CRELINSTEN: You mean, what commodities?

MR. GERIN-LAJOIE: Yes.

MR. CRELINSTEN: Television, refrigerators, washing machines, ranges, air conditioning and small appliances -- vacuum cleaners, irons, kettles, and so on.

MR. GERIN-LAJOIE: For how long have you been in business?

MR. CRELINSTEN: 14 years.

MR. GERIN-LAJOIE: Have you been always in the same location?

MR. CRELINSTEN: Yes.

MR. GERIN-LAJOIE: Could you tell how your business started, as shortly as possible -- I mean, how great was it when you started and how has it developed regarding the volume of sales and number of employees?

MR. CRELINSTEN: We started by selling records in 1940. During the war it was hard to get appliances, and then in 1945 we went into appliances, and the volume was about 75 000 or





so, and then with the anti-price-fixing in 1951, when it was permitted to advertise openly reduced prices, prices lower than the suggested list prices, our volume trebled and this year was up to half a million.

MR. GERIN-LAJOIE: How many employees have you got now?

MR. CRELINSTEN: 5.

MR. GERIN-LAJOIE: For how long have you had that number of persons?

MR. CRELINSTEN: Oh, for about the last 4 years. My brother was there too, but he has been sick in the last 4 years, so it necessitated getting others. The number of employees has not increased very much with the increase in volume.

MR. GERIN-LAJOIE: Did your volume of business start getting bigger shortly after the war, or only with 1951?

MR. CRELINSTEN: Only with 1951. There was some increase with our adding new lines. We originally used to have only the records, and then we got new franchises, and there was a great increase only when the anti-price-fixing law was passed and we were allowed to compete with the bigger stores by reducing our prices. It enabled us to compete more successfully with the bigger stores.

MR. GERIN-LAJOIE: Can you tell me the name of the main manufacturers?

MR. CRELINSTEN: R.C.A. Victor. Westinghouse.



Philco, Canadian Admiral, Marconi, Bendix, Thor, Inglis, Beatty, Norge, Crosley, Moffat, Hoover; I think that about covers the main ones.

MR. GERIN-LAJOIE: Before the 1951 legislation were you in the same category as other retailers being more or less obliged to keep the market prices by the manufacturers?

MR. CRELINSTEN: Yes. The manufacturer had the privilege of refusing to sell us if we didn't abide by his fixed retail selling prices, so if we attempted any open advertising of reduction of his prices he would cancel our franchise, so we could not engage in any open advertising. The only kind of price reductions we could do was by word-of-mouth in the store, or occasionally the manufacturer would allow us to advertise a big trade-in. One automatic washing machine manufacturer was not moving a lot of his merchandise and he gave us permission to advertise high trade-ins, actually in excess of the true value of the used washer, and only in that way were we able to side-step the fixed prices.

MR. GERIN-LAJOIE: Apart from trade-ins did you have reductions?

MR. CRELINSTEN: Yes, in the store but if it ever came to the attention of the manufacturer -- some other retailer would complain he lost a customer to us because we quoted a price lower than the fixed retail price -- we would get a call from the manufacturer. One time there was



some change in the radio stations in Montreal, and we put an advertisement that we would make the adjustment free for the customer, and one particular manufacturer construed that as an attempt at price reduction and called us to not repeat the advertisement.

MR. GERIN-LAJOIE: What change of policy happened in your firm in 1951 with the change of legislation?

MR. CRELINSTEN: We began advertising in the newspapers price reductions lower than the suggested list prices, always of course still clearing it with the manufacturer, because even though there is such a law the manufacturer still has leeway where he can curtail your activities by short-shipping you or things of that nature. any  
So advertising : we have done lower than the suggested list prices, was still done with the approval of the manufacturer. Every time we advertise a lower price we first call the manufacturer because they pay 50% of our ads.

MR. GERIN-LAJOIE: What happened in your business when you started with these advertisements?

MR. CRELINSTEN: It increased and we made more money.

MR. GERIN-LAJOIE: What was the usual mark-up in the times of price maintenance?

MR. CRELINSTEN: About one-third.

MR. GERIN-LAJOIE: And now what is your



gross mark-up, roughly speaking, in your business?

MR. CRELINSTEN: I imagine about 18%.

MR. GERIN-LAJOIE: Is it about the same on every item or does it vary?

MR. CRELINSTEN: It varies. Very often a manufacturer has merchandise which he wants to sell and so he will give us a certain price concession which enables us to make more than 18% on that commodity.

THE CHAIRMAN: When you speak of formerly a 1/3 mark-up and now 18%, is that the mark-up on your laid down cost?

MR. CRELINSTEN: No, on our retail selling price.

THE CHAIRMAN: Margin on selling?

MR. CRELINSTEN: Yes

THE CHAIRMAN: That is rather different

MR. CRELINSTEN: That is right; I always think in terms of on selling.

MR. GERIN-LAJOIE: Do you have any explanation why your business could stand with such a margin of about 18% and another could not?

MR. CRELINSTEN: Yes, I have an idea myself why. I run the business myself, I know it very well. I don't have the problems of inventory control. I don't have the problems of paying salesmen commission on the floor. I can handle it all myself. My volume went up from 100,000 to 500,000 without any increase in staff. I feel modern products are so pre-sold today, whereas





5 or 10 years ago -- I remember 20 years ago if a man bought an automobile his time was spent in having it serviced, whereas today you can feel quite comfortable going 25,000 miles. If a refrigerator manufacturer gives a 5-year guarantee on the compressor, I think he has a good knowledge it is going to last more than five years, otherwise he could not give that guarantee. Because of the increases in technical features it is much easier to sell it, and therefore by reducing prices I can compete better with the big stores which, in my reasoning, have a bigger overhead because of their problems with salesmen and inventory controls, and I can operate on a smaller gross profit, because by and large a consumer knows he is getting the same product from me as he would from the big stores. For example, one Friday night I recall selling 17 television sets myself, because the people knew they were getting a very good price. They know what the price is around town on that product with the other stores, and they know it is a nationally advertised product, and they were all brand-new, in crates. It is the same reasoning with the supermarkets in groceries, when at one time they used to have to have 30 and 40%, but a supermarket will operate on 18%, because you do not have to dig into the barrel to get a pound of sugar, it is all in a cellophane package. So, it is



now possible for people like myself to operate on a much smaller gross profit without having to resort to so-called loss-leaders, because, for myself, I have never sold any commodity lower than the wholesale price. I feel it is for that reason that I can do the increased volume, because products are pre-sold. Nothing attaches to the commodity whether the customer buys it from me or from a big established store which charges him more money. It is still the same product coming from the same factory, and in many instances the manufacturer maintains service, so that when manufacturers, or whoever might on occasion, say that if a person buys an electrical appliance from a so-called discount house he will be losing any service, that is not true.

MR. GERIN-LAJOIE: Would you explain the policy of your firm regarding service?

MR. FAVREAU: Could you elaborate a little bit more concerning the types of appliances on which manufacturers usually give service?

MR. CRELINSTEN: Yes, certain manufacturers -- there is a slight variance in the practice itself -- certain manufacturers maintain direct service from the factory to the consumer. One of the manufacturers maintains it on every product he sells, which includes automatic washing machines, ordinary type washing machines, refrigerators, stoves, dish-washers, home freezers; he maintains the service, and this is the way he



operates: He has his suggested list price, on the basis of which price we get our discount, and then he also has a schedule of service charges depending on the commodity. For some he will charge \$2.00 for one year's service, for others \$4.00, \$5.00, \$7.00, and I think \$9.50 is the highest

THE CHAIRMAN: Are these supposed to be added to the list price?

MR. CRELINSTEN: It is added to our cost price. They are optional. One manufacturer has this arrangement: Every electrical appliance we buy from him, which includes ranges and refrigerators mostly, he has a service policy and we can sign up for that service policy, and if we do, then automatically each range or refrigerator which we buy has a service charge of \$6.00 to \$8.00. If we don't buy that, we maintain our own service. Wherever the manufacturer has direct service on the contract for that service, and when I sell the commodity to the consumer, I explain exactly what the guarantee means. They confuse it with the policy of certain stores who advertise "goods satisfactory or money refunded", and they take that to mean guarantee, that if at any time they are not satisfied they can return it. But, according to the manufacturer, he states very specifically what the guarantee means, and in most instances it reads, "The manufacturer guarantees this commodity to be free of defective workmanship



Any parts which prove to be defective the manufacturer undertakes to replace free of charge not including labour costs". So, there is a very important point which most consumers do not realize, that there is a difference between guarantee and service, the parts are free, but the labour is not. So, where these manufacturers maintain a direct service arrangement from the factory to the consumer, the consumer has nothing to worry about whether he buys from me operating on 18% or from somebody else, because the parts are free if he buys it from me. It is still guaranteed by the manufacturer within the time prescribed, which is usually one year on most electrical appliances, and if he wants service he can get it direct from the manufacturer. If the worst happens he can always get it from an independent service company; \$5 or \$8. on service. There is a lot of to-do made about this idea of service. Many of the manufacturers maintain that a consumer is very foolish to buy through a discount house like myself, because if he saves \$150.00, he will lose it on service. That is a fallacy. It is an absolute general rule in the automatic washing machines, all of them -- and I could mention the names Inglis, Thor, Bendix, Westinghouse, Beatty -- they all maintain direct factory service. Any automatic washing machine which I sell, the manufacturer includes a certain amount of money in his cost price which is automatically ---





MR. FAVREAU: For which of those do you buy the service?

MR. CRELINSTEN: That is included in the retail -- for example, an Inglis washing machine is \$429.00, that includes service. In the automatic washing machines it is a different practice but it has always been their practice that service installation, guarantee and demonstration is done by the factory, so if any argument is advanced that a consumer is going to make a bad buy by buying any automatic washing machine from a discount house because he is not going to get service, it is a complete fallacy.

THE CHAIRMAN: I would like to get clear on this matter of the charge made by the manufacturer for the service. I think you said in some instances it was \$2.00, sometimes \$5.00 or \$6.00, with a top of \$9.50.

MR. CRELINSTEN: Yes.

THE CHAIRMAN: And that that was optional. Do the manufacturers generally speaking give you the option to buy that direct with them?

MR. CRELINSTEN: Yes.

THE CHAIRMAN: Or is it that in a metropolitan area like Montreal, where the service would be fairly readily available, that they almost insist on you taking it, and in out-lying areas they don't?

MR. CRELINSTEN: I can't answer that with



"yes" or "no". In the automatic washers it is absolutely compulsory, we automatically buy. If we sell it outside the metropolitan area the manufacturer will not service that distance out of the metropolitan area, in which event he refunds me the amount of the service charge, and I deduct it from the customer's purchase price. In those instances where the appliances are serviced in the metropolitan area it is optional; I can buy it or not. Another one, he has listed the charges, and I have bought them all with the service, and I don't know if it is optional or compulsory. If I were to sell at the full suggested list price I would naturally absorb the \$6.00 charge, but when I sell at 15 or 18% lower, amounting to \$100.00 or \$150.00 I explain to the customer he gets the guarantee but he does not get any labour free unless he buys the service contract from the manufacturer. If he does not wish to do so, any time he has a service call he can contact me or an independent service company and they will charge \$3.00 or \$4.00 a call.

THE CHAIRMAN: You will provide the service at a price?

MR. CRELINSTEIN: Definitely. I have read some of the reports and they think the loss-leadering is dilatorious to the general merchandising of appliances, and I maintain from my own experience that that is a fallacy.

THE CHAIRMAN: This service provided by



manufacturer does not apply to television sets?

MR. CRELINSTEN: As a matter of fact many of the manufacturers, the price on television sets generally follows this procedure: The picture tube is guaranteed for one year; all the other parts are guaranteed for three months, but generally some of the manufacturers -- Admiral, for example -- give you one year on all the tubes. Then they have a service contract and that contract is added on to the list price, because even the stores who sell at the full suggested list price in most instances sell the consumer the service contract on top of the price they charge.

THE CHAIRMAN: That is the difference in practice between television sets and other types of appliances?

MR. CRELINSTEN: Precisely. R.C.A. Victor has a direct factory service, Admiral has one, and Westinghouse and Dumont have. I know R.C.A. Victor have their own personnel and trucks. Some of the other companies don't, but they make a contract with an independent service company which handles their service. As far as service on television is concerned, again, we explain to any customer that if they want to buy the service contract for a three-month period -- R.C.A. Victor has one they charge \$22.50, which gives the customer a free installation and one free service call, and a year guarantee on all parts. Then, after one service call, they charge for the extra service calls.



We ourselves have a service contract which entitles the customer, for \$15.00, to 3 months unconditional service. No matter how many calls he may require, he gets it for \$15.00, and again we explain, when some of them hesitate and argue, 'Why should we require service on a new commodity?'. that that is an inherent characteristic of a television and it does require service; but the worst that can happen is that they may have to pay \$5.00 a call.

THE CHAIRMAN: You put up three propositions: One, they pay for no service; the other they buy the company's service contract, and thirdly, they take yours?

MR. CRELINSTEN: Precisely, so even though we give big discounts, they buy a nationally advertised commodity and pay \$100.00 less when buying it at my place; they get the same commodity in a crate guaranteed by the same manufacturers under the same terms and conditions, and the only thing they do is get service cheaper if they want to buy it. The fact that the consumer suffers when buying from discount houses is a fallacy.

THE CHAIRMAN: Insofar as television is concerned, your charges are lower than the manufacturers', and in respect of other appliances it is the same?

MR. CRELINSTEN: Yes.

MR. FAVREAU: Is it your experience that





these service charges for your own servicing, through your firm, make up and pay for your actual expenses in servicing?

MR. CRELINSTEN: Oh, yes

MR. GERIN-LAJOIE: Have you had any complaints about clients or customers having bought articles at your place and being under the impression they could get service and being mad at not getting it later on?

MR. CRELINSTEN: Very little. On occasion that is so, because I find, as a bookie once said to me, "The reason bookies can operate is that there is a little larceny in everybody's heart". It now happens very rarely. I explain it to them and I know what is going on in their minds. They don't distinguish between guarantee and service because of the practice of manufacturers to advertise it without making the distinction, and also the big department stores offering "goods satisfactory or money refunded". Now I have very, very little; I may have one out of 100 or 200 who has a complaint to make that he understood he was going to get free service.

MR. GERIN-LAJOIE: At the time of the sale do you find some persons prefer to pay something in addition to your lower prices to get service?

MR. CRELINSTEN: Yes, most of them do -- all of them do. I usually sell them for the service because I know it is to their benefit. They hate parting with money and they also operate



on the premise "Why should a brand new commodity be defective?", so they are contradicting themselves. Two months later they 'phone and say something is wrong with the machine and why should that be because it is a brand-new machine, so naturally I explain that if nothing ever went wrong with it the manufacturer would not have to guarantee it; so in most cases I sell them service.

MR. GERIN-LAJOIE: With that service are they allowed as many calls as they wish free of charge?

MR. CRELINSTEN: Yes; on television it is 3 months, and on refrigerators and ranges and automatic washers, if it is factory maintained service, it is an unlimited amount of calls.

MR. GERIN-LAJOIE: With this additional charge to your basic price there is still a large reduction compared with other stores?

MR. CRELINSTEN: There is no comparison.

MR. GERIN-LAJOIE: To the suggested price?

MR. CRELINSTEN: Well, one sells at a suggested list price of \$469.00, and I sell it for \$339.00 without service but also the people who sell at \$469.00 do not include service either, so they save \$130.00. If they pay the \$469.00 they still have to pay for the service.

MR. FAVREAU: In this case you take less than your 18%?

MR. CRELINSTEN: It depends on my cost.



MR. FAVREAU: But in that particular case?

MR. CRELINSTEN: No, because the manufacturers dropped the price to \$267.00. The manufacturers now, even though some of them know that there is loss-leadering going on in discount price-cut houses, they themselves slash prices even more, which contributes much more than any activity on the part of the discount house. One of the manufacturers recently cut the price, which cost me \$265.00, and my competitors bought it for \$185.00; \$185.00 against \$265.00. When they are stuck with merchandise they try to move it out to the man who will operate on a small margin, so I think they are contributing more to it than the individual retailer.

MR. GERIN-LAJOIE: It has been said before the Commission that people cutting prices, as they say, cannot stay in business very long; what is your view about that?

MR. CRELINSTEN: Well, my family is in the fruit business for 35 years, and I used to be in the grocery business, so I had contact with one of the big supermarkets -- Steinoergs -- and when they started, the same allegation was directed toward them, that it would only be a matter of days before they would be out of business. Their growth has contradicted that, simply because there has been a change in modern advertising and modern distribution. I think commodities are now pre-sold because of the millions of



dollars put into advertising by manufacturers. There is very little demonstration required on our part for the sale of a commodity. I have sold television sets, washers and dryers over the telephone. A man who flies his own aeroplane from here to New Brunswick came in and bought a Westinghouse washing machine. They just buy them over the telephone, because from experience over the last 15 years you don't buy a lemon. Merchandise is so well-made and standardized it is no longer necessary, in my opinion, to have a third mark-up to operate business without losing money.

MR. GERIN-LAJOIE: Is it your opinion that would apply to new products, like dish-washers?

MR. CRELINSTEN: I think so, because I think the thinking on the part of the public is that when they see a name like R.C.A. Victor or Westinghouse they know there is quality in the product.

MR. GERIN-LAJOIE: But how do people know dish-washers exist?

MR. CRELINSTEN: A manufacturer spends millions and millions on advertising to make the public aware of it. 2 years ago we were selling room air conditioners and few people knew about it, but now there are about 7 distributors and they all know about it. As a matter of fact, in the United States there is a trend where the big supermarket grocery stores are going to go into appliances, because they know it is a pre-sold commodity.





MR. GERIN-LAJOIE: Can you tell me how re-sale price maintenance tended to favour the larger stores?

MR. CRELINSTEN: Definitely; I have proof of it every day. People come into the store and ask me for a discount price and I give them a discount price, and they say, "I don't find that very cheap", although it may be \$150.00 below the department store price. I say, "Go to this store or that store and it will be the suggested list price", and they say, "I don't buy my appliances at the big stores. If I had to I would buy them at the big store, so I expect to get a lower price from you". So, it was impossible to compete with the prestige of the big stores, their easy credit terms, and the six pages of advertising every night. When I see that loss-leadering -- a term to which I do not subscribe at all -- is affecting the life and preservation of the small store, I don't agree. Many of the big stores are thinking of giving up appliances because they find it difficult to compete with the small store, -- a person like myself who runs my business very well.

THE CHAIRMAN: Do you consider your business a small business?

MR. CRELINSTEN: Yes.

THE CHAIRMAN: In the context in which you have been talking?

MR. CRELINSTEN: Yes, very small.



MR. GERIN-LAJOIE: It has been said that many of the discount houses, like yours I imagine, are kept alive -- I mentioned the point a moment ago -- mostly with the rush buys on T.V. sets which have been going along for six months or so, and as long as the T V sets will sell in great quantities they keep alive: Could you say in your own case how your business grew in the last few years before you sold T V. sets, and how you were cutting prices?

MR. CRELINSTEN: That is right; T.V. is a very big commodity, but right now I do about \$125,000.00 a year on automatic washers -- \$100,000.00, anyway. That is not a new commodity. When television came along I increased my advertising to where I spent \$300.00 a week, but if it no longer warrants it, if I only sell 5 or 6 a week, I naturally reduce my overhead by decreasing my advertising. There are some people who do nothing but television cut-price merchandising, but I have a variety of commodities. I may not make as much money once television becomes saturated, but if other people are going to go out of business there will be a chance to raise your low discount a little bit. But the main discount is not coming from the department stores who are monopolizing the business from the other small business houses.

MR. GERIN-LAJOIE: I would like to know if



phonograph records were cut-priced?

MR. CRELINSTEN: Prior to 1951?

MR. GERIN-LAJOIE: Prior and after?

MR. CRELINSTEN: Well, prior to 1951 it was very strict maintenance because there was practically a monopoly in the record business maintained by one company, and after Columbia came in there was R.C.A. Victor, and there are many more now, but they were very strict about price maintenance on that

MR. GERIN-LAJOIE: How is it now?

MR. CRELINSTEN: They don't like it, because even after 1951 I ran an ad advertising a well-known brand at a discount price, and as a matter of fact they threatened to stop selling me.

MR. GERIN-LAJOIE: What is your approximate mark-up on records?

MR. CRELINSTEN: 40% on selling.

MR. GERIN-LAJOIE: That is on the suggested price?

MR. CRELINSTEN: Yes.

MR. GERIN-LAJOIE: What is the mark-up you have?

MR. CRELINSTEN: I sell these mostly at list price.

MR. GERIN-LAJOIE: You don't cut the price?

MR. CRELINSTEN: In some instances, but not much because I still hesitate to advertise openly because I don't know what the manufacturer



might do. There is more handling involved in records, and so on.

THE CHAIRMAN: When you speak of the manufacturer of records, are you speaking of American manufacturers?

MR. CRELINSTEN: No, they are mostly Canadian-made.

THE CHAIRMAN: Has a Canadian manufacturer threatened to cut you off?

MR. CRELINSTEN: Yes.

THE CHAIRMAN: Since this legislation was passed?

MR. CRELINSTEN: Oh, yes

THE CHAIRMAN: Very interesting.

MR. CRELINSTEN: As a matter of fact, I lodged a complaint against one manufacturer on television who did cut me off for cut-pricing.

MR. GERIN-LAJOIE: Could you tell the Commission whether, in your opinion, cut-prices do affect the reputation of a certain brand of products in the minds of the public generally?

MR. CRELINSTEN: I don't think so. People often come in and say, "Why are you selling this so cheap? Is there something wrong with it?" If it is a practice of one individual I think it might affect, not the prestige, but it might throw some doubt in to the consumer's mind as to the validity of this cut, but if it is a general practice I don't think it depreciates the trade-mark at all. If a manufacturer maintains





his volume has dropped in any particular trade name, and is due to depreciation, I don't think so. It may be dropping because many of the big stores may not be promoting his product as aggressively as before. On a General Electric polisher a price of \$39.55 has been established by two stores, which is about 10% gross profit. Well, no big store is going to promote that very aggressively. So, his volume may drop in that instance, but I don't think it is due to depreciation of the value of the trade-mark, because people still come to my store and pick out that trade-mark.

THE CHAIRMAN: And the buying public is not affected, in your view?

MR. CRELINSTEN: That is right. The manufacturer's volume may drop.

THE CHAIRMAN: And the dealers who normally have handled the product may be affected in their treatment of it?

MR. CRELINSTEN: Yes, in their treatment of it.

THE CHAIRMAN: But the consuming public is not prejudiced?

MR. CRELINSTEN: Not in the least, in my opinion, because of the experience I have had in my store.

THE CHAIRMAN: There was one question that arose; you said that you had a lower overhead because you did not have salesmen's commission to pay, as many of the bigger places had?



MR. CRELINSTEN: That is right

THE CHAIRMAN: Have you no salesmen?

MR. CRELINSTEN: Well, there is myself and there is -- there are two people, a girl in the store selling records, and she helps out. When I say I have none, I have two people help me out, and the balance I do myself.

THE CHAIRMAN: I was just wondering, you estimated you might do half a million dollars business?

MR. CRELINSTEN: Yes.

THE CHAIRMAN: I was wondering if you sold the goods all yourself?

MR. CRELINSTEN: Pretty much.

THE CHAIRMAN: You must be a busy man?

MR. CRELINSTEN: I am. It is fabulous. I sold 40 television sets in the week that Channel No. 6 came on the air.

THE CHAIRMAN: It was suggested to us in Toronto that to do a business of something over \$4½ million you require a staff of 60.

MR. CRELINSTEN: That would be about 7 people for half a million. Oh, well, I am very good.

THE CHAIRMAN: You don't think that is really necessary?

MR. CRELINSTEN: Well, it is uncomfortable at times.

THE CHAIRMAN: But you would not agree it needs 60 people?



It depends on the kind of  
 MR. CRELINSTEN: operation. I know a  
 fellow who works in a department store and in the  
 television department they have six people and they  
 sell less than we do, but they do a different kind  
 of operation, and they sell at full list price,  
 and they spend  $1\frac{1}{2}$  hours with the customer telling  
 him things he already knows. They may eventually  
 buy furniture, so they have to be polite and  
 spend time just talking.

THE CHAIRMAN: Your type of operation, would  
 you say, is much more economical?

MR. CRELINSTEN: Oh, definitely, because I  
 have sold an Inglis washer and dryer for \$525.00  
 over the telephone. A man 'phoned one day and he  
 said, "Fine, send it up", and I don't know his  
 face and he gave me a cheque. We had a man from  
 Saint John the other day and he bought a Westing-  
 house right there and then. One of the manufacturers  
 maintains that one of the reasons for a wide spread  
 between retail and cost is to promote the products,  
 but I think the consumers know the products now.  
 If you go to buy an automobile there is not much  
 the salesman tells you about it. There is not  
 much he knows. This loss-leadering, I don't think  
 there is much loss-leadering going on in the sense  
 the retailers are selling below their wholesale  
 price. I don't, unless I am forced to by the  
 manufacturer cutting the price.

THE CHAIRMAN: Do manufacturers sometimes  
 give you a discount?



MR. CRELINSTEN: Certain manufacturers have quantity discounts.

THE CHAIRMAN: Are these quantity discounts pretty substantial?

MR. CRELINSTEN: No, not much. On an automatic washer it may differ \$20.00 between one and buying 50, but, of course that \$20.00 counts when you are doing the discount business, but it is very little actually.

MR. FAVREAU: How many people do you keep employed on servicing?

MR. CRELINSTEN: Well, only in the television; only recently, I used to work with a service depot. They had 5 or 6 men, but only recently I have my own -- only one.

THE CHAIRMAN: You were working on a contract with a service depot?

MR. CRELINSTEN: Yes, I changed about two months ago, and I have one man on television. As far as the appliances are concerned, I don't maintain any service there wherever possible. I do it through the manufacturers, or, in those instances where the manufacturer does not maintain his own depot, I explain it to the customer and have arrangements with an independent service dealer. As I say, I think price maintenance, in my opinion, is to the benefit of the big stores and not to the benefit of the small stores. On the basis of my operations that is my opinion.

THE CHAIRMAN: Your conclusion on that score





is that the ability to cut-prices to some extent reduces your margin of gross profit and enables you to compete with the bigger stores on a basis which is profitable to you?

MR. CRELINSTEN: Yes.

THE CHAIRMAN: More profitable than when there was maintained prices?

MR. CRELINSTEN: When there was maintained prices I would go home and not sell a refrigerator. They would go to the big stores who have 40 or 50 floor samples. I maintain floor samples, and I have catalogues. As far as automatic washers are concerned, I am told I sell more than anybody in Canada. The only thing the big department stores are doing is turning to their own trade-marks. When it comes to the nationally advertised trade-mark, they cannot compete with me. If they decided to go into a price-war which I don't think they will, they could probably sell far below my cost, and eventually capital would force me out, but that is not the situation. They like money. I think that operation is changing. I think it may reach the point where you will have appliances in supermarket grocery stores

THE CHAIRMAN: with the customer lugging it out behind him?

MR. CRELINSTEN: Precisely; they will do it

MR. WHITELEY: How do you account for your large sale of automatic washers?



MR. CRELINSTEN: Well, even when there was price maintenance I started selling Bendix and worked out this high trade-in deal which they approved. I sold a lot because of that before 1951, and I have a reputation in the city now for good prices. There is another manufacturer in town, Inglis, with whom I started working about a year ago. I don't know why the other dealers don't do it. Maybe they think it does not pay to put a half page advertisement in the paper. They don't take the initial chance.

MR. WHITELEY: Do you advertise widely at the reduced price?

MR. CRELINSTEN: Well, I did, but right now the manufacturer is asking and urging that we don't mention prices, so we don't, because even though there is the anti-price-fixing law, we know if we went in contradiction to the manufacturer's wishes we might have difficulties.

MR. WHITELEY: Has your volume fallen off since you ceased to mention prices?

MR. CRELINSTEN: No, he might say, "Don't say my latest 1954 model, but I don't care what you do with my 1953 model", so we advertise that. Well, the public know about it now, that any man who advertises at a low price for 1953 will do so for 1954.

MR. WHITELEY: We were told even if you put a ridiculous price on either dryers and the dish-washers it simply would not create an interest



with the public.

MR. CRELINSTEN: That is probable -- on a dish-washer.

MR. WHITELEY: A dryer?

MR. FAVREAU: Any new product which is not well-known?

MR. CRELINSTEN: That is true. If there was a new product the public know nothing about, unless they have some way of comparing things, they don't know whether it is a bargain, because as far as their appreciation of the intrinsic worth of a product is concerned, they just don't know anything.

MR. WHITELEY: The effect of this particular submission was that you could not sell these products?

MR. CRELINSTEN: You mean dryers?

MR. WHITELEY: Dryers or dish-washers

MR. CRELINSTEN: Dish-washers, that may be so, because there is very little demand for dish-washers. The public have not accepted that yet. It requires a lot of plumbing; it is quite expensive; and as far as dryers are concerned, there was very little acceptance but now there is much more. I sold very few last year, but now I am selling quite a few. Dryers have this problem: You have to install 220 volts, and most homes are equipped only for 110 volts, so in order to make the provision for the dryer they have to spend



\$75.00 or \$100.00 before they can use the dryer. Now, however Westinghouse have brought out a machine which will work on 110 -- not as efficiently. Frigidaire has brought out one that eliminates the venting; they condense the moisture. Generally dryers are not widely accepted, but even there price-cutting does sell a lot more, and if the public knows it is \$299.00, and we sell at \$219.00, I sell them. As I say, air conditioners two years ago, I was selling them and there was very little demand for them because they were high-priced, and our season is so short, and yet, this year, because there are more manufacturers and more advertising, we began to sell air conditioners over the telephone.

THE CHAIRMAN: Thank you very much. We appreciate you coming here and telling us your story.

---A short recess.

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Delegation from: THE RADIO-TELEVISION MANUFACTURERS' ASSOCIATION OF CANADA

Represented by: Mr. Stuart M. Finlayson,  
Chairman of the Committee.

Mr. Harry Marpole,  
R.C.A. Victor Company of  
Canada, Montreal.

Mr. F.G. Samis,  
The Northern Electric  
Company.

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THE CHAIRMAN: The next presentation to be presented is by the Radio-Television Manufacturers' Association of Canada, and I believe it is being presented by Mr. Finlayson.

Mr. Finlayson, is this a brief for the manufacturers alone or is there some special reference to your own company?

MR. FINLAYSON: No, Mr. Chairman, this is a brief on behalf of the Association, and I did say in the covering letter if the company could be of any help, all right, but I think the thing can be confined entirely to the Association's point of view.

THE CHAIRMAN: Can you begin by giving us the names of the delegation?

MR. FINLAYSON: Mr. Harry Marpole of the R C A. Victor Company. Canada. Montreal.

THE CHAIRMAN: Is he an officer of the Association?

MR. FINLAYSON: No sir. As a matter of fact,



I am not an officer of the Association; I am Chairman of the Committee. On my left is Mr. F.G. Samis of the Northern Electric Company. I believe that you have already seen him.

THE CHAIRMAN: Yes, we have had a brief presented by Mr. Samis.

MR. FINLAYSON: By way of preface, I would like to say this meeting coincides with the annual meeting of the Association in Niagara Falls, which has created a little difficulty for us, and Mr. Marpole and Mr. Samis very kindly consented to come along to give me the benefit of their support and guidance and to make themselves available to the Commission.

THE CHAIRMAN: What is this Committee called?

MR. FINLAYSON: It is a committee which was set up recently from the point of view of doing what we could with respect to Government Acts or legislation of the kind your Commission is concerned with.

THE CHAIRMAN: So really, it is a special committee?

MR. FINLAYSON: Yes, not necessarily a standing committee. As a matter of fact, it consists primarily of one at the moment.

THE CHAIRMAN: You are it?

MR. FINLAYSON: That is it.

THE CHAIRMAN: I think we had better follow the usual procedure; If you would read the brief and make any comments you wish.



MR. FINLAYSON: I will do that.

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"The Radio-Television Manufacturers' Association of Canada consists of some ninety member companies - of which twenty-one are at present engaged in the manufacture of broadcast and television receivers for sale to the public; the remainder are either manufacturers of components or are engaged in other aspects of the electronic industry."

I would like to clarify one point there; There are two or three companies making receivers which are not members of the Association, but I believe I am correct in saying the volume of business those firms do is not very considerable and probably, therefore, that fact does not distort the general position.

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"Immediately we learned that your Commission was instituting an inquiry into the subject of 'Loss Leaders', the Association formed a Committee to study the position, but time has not yet permitted us to collect a very comprehensive body of detailed statistical information respecting the characteristics or extent of the so-called 'Loss Leader' practice in the broadcast and television receiver business. However, our study is continuing.



and we will be glad indeed to make available to the Commission, from time to time, any worthwhile and conclusive information we may be able to collect."

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I would like to interpolate again, you will appreciate, I am sure, that this television business is relatively new in the sense that the manufacturer of receivers in this country commenced about  $5\frac{1}{2}$  to 6 years ago, but the market has only begun to urge them in the last two years and we are still experiencing changed conditions, as, for example, a station in Winnipeg has just commenced and therefore our experience is relatively limited both in time, and so on. Let us say in a year or two we will have a more general picture than we can possibly bring forward now.

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"In the meantime, we have endeavoured to look at the position from the point of view of broad principle and have come to the conclusion that, so far as our knowledge is concerned, there is no sound basis upon which to suggest restrictive legislation or Government control in any form with respect to the so-called 'Loss Leader' practice

"It might be suggested that retailers should be forced to sell their goods for some minimum mark-up above the proper





cost of the goods to the dealer, but it seems apparent that such legislation would have to provide for a wide variety of exceptions to cover such items as perishable goods, goods in over-abundant supply, goods which had become obsolete, obsolescent or damaged and perhaps, in extreme cases, for certain classes of forced sales. It is our view that any legislation which could be brought down along these lines would either be so restrictive as to put an unbearable burden upon enterprise, or that it would have to contain so many exceptions as to make its practical working impossible. It seems clear that the public interest would not thus be served and that the effect of such legislation might well be to stultify commerce by imposing artificial restraints WHICH, in turn, could only be applied effectively by direct Government control of business.

"Our Association submitted to the Commission investigating the Resale Price Maintenance question, in 1951, the view that, if the power to maintain resale prices were removed from manufacturers, a retrograde step would be taken. It is our opinion that the experience of the last two years or so has fully borne out that submission.



"Consequently, the only suggestion we can make in connection with the present Inquiry would be to propose that serious consideration be given to restoring to manufacturers the power to maintain list-prices of their branded goods, or at least to provide them with a large measure of control of the prices at which such goods may be offered to the public.

"We trust that the views expressed herein, although stated in very brief form may be of assistance to the Commission and we should like to assure the Members that we stand ready, at all times, to be of help in every way that is possible.

"Submitted on behalf of The Radio-  
"Television Manufacturers' Associa-  
"tion of Canada."

"Montreal, P.Q., June 3 1954."

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which is the day on which this brief was prepared in its present form.

I would like, if I may, Mr. Chairman, to digress a little more on the problem we have. The market for T.V. receivers started about 6 or 7 years ago in southwestern Ontario where reception could be obtained from Buffalo and Detroit and one or two other centres in the United States. Then C.B.C. started stations in Toronto



and Montreal simultaneously in 1952, and then last year, a little over a year ago, a second station in Montreal unscrambled the language problem, and more recently stations in Ottawa, Vancouver, Winnipeg, and a station is in process in Halifax. In addition to that some, I believe 17 private licenses have so far been issued covering the smaller centres of population, and 3 or 4 of those are in operation -- Kitchener, North Bay, Hamilton and London -- and others are expected to go into operation within perhaps 12 months. So, our experience is limited geographically to the major centres of population and it is also very distinctly limited in time, and furthermore it has been affected, I believe very considerably by the fact that any very new growth industry of this kind inherently goes through a great many changes in the process of manufacture and selling during the first months. Although we are trying to collect information, we are quite satisfied at the moment that any conclusions we might draw might well be found to be not supported when we get a little further along, or, if they are not supported fully they may have to be modified in some respects, and from that point of view we have felt it desirable at this time not to attempt to provide you with a vast mass of statistics which we must necessarily have to qualify by saying that the information is based upon evidence which still needs further



study. However, we are very much convinced that as our long experience in the business has shown, we are convinced that it would be impracticable, and therefore not in the public interest, to attempt to legislate at the retail level, and having reached that general conclusion we were driven more or less inevitably to the other conclusion as recommended in the brief that some resumption, or resumption in part, of the right of the manufacturer to control the prices of his own merchandise would be the only sound process which we could offer at this time.

I think, sir, that probably gives you the general background in which this presentation has been made and, as I said earlier, I am sorry we are not able to have more representatives here. I can tell you that our officers and our members are entirely at your disposal at any time, and we will be very glad indeed to visit you in Ottawa or provide information by correspondence in respect of any question you wish to address to us.

THE CHAIRMAN: Do either of your colleagues wish to add anything to what you have said?

MR. FINLAYSON: Mr. Marpole has a point from the experience in the past few years that I think may be of interest to the Commission in connection with what we have seen going on in the retail trade.

MR. MARPOLE: Mr. Chairman, this, I want to make clear, relates to my own company, and





that is the R.C.A. Victor Company. It is one of the larger companies in the field, and I think is not an isolated instance. We have seen, of course, selling going on at mark-ups that we know very well are not sufficient to cover the costs of the retailer doing business. We have experienced in the past 12 months approximately, that is, from sometime early in 1953 to the present time, 10 times the number of bankruptcies amongst our dealers as the average of the 5 years preceding that period. We attribute that very directly in most of the cases to selling on too low a gross. It is coupled with volume in every case. They are not dealers who have suddenly come in and got out again. Most of them were with us 5 years, and in one case a dealer had been with us for 41 years, and has gone under as a result of being forced by competition to sell on gross mark-ups which were not adequate to support his operating costs. That is a fact. I would like to speak, perhaps, in one other aspect which was brought out by Mr. Crelinsten in referring to the warranty and service. I think it was obvious that such service on an instrument like a television receiver or a radio receiver must of necessity be a more exacting job than on, say, a refrigerator which has very few moving parts. I don't think there is any over-all rule applying to goods which are very different. Again, it is very different from a suit of clothes or something that is going to be consumed.



The pattern in our industry -- and I am speaking now of the consumer end of it -- and I would like to introduce something which appears to be very largely overlooked, and that is the radio receiver sets; they still form a very important part of the volume of our business. Starting from the days when price maintenance was legal, our contract with our dealers provided that they, out of the discount allowed to them, would provide the labour on warranty service -- that is, within the first 90 days -- and we would supply replacement parts for any found defective. That pattern still persists in the radio receiving set field; our contracts still call upon our dealers to provide the labour.

THE CHAIRMAN: Your dealers all work on that basis?

MR. MARPOLE: Yes. In the television receiver set field the discounts, when we first got into it -- and I think you will bear me out on this -- were somewhat lower than they had been in the radio business, and one of the reasons was that the unit still was much higher in dollars. Furthermore, we were struggling, as you gentlemen know, with a very large differential between the selling prices of our sets in Canada as compared to the United States. That can be and has been, I think, quite adequately explained, but nevertheless it is not possible to get that story across to the public, and



therefore we have done everything possible to keep that differential as low as possible. The same dealers who accepted the responsibility on their discount for radios claimed they did not have enough discount on the sale of television receivers, and we have never been able to get them to accept that responsibility, which is somewhat at variance with what they now claim they can easily sell. Reference was made, amongst other things, to maintaining factory service depots: That we do to the best of our ability, but we can only handle a fraction of the sets that have to be serviced, and there only in the cities where we have our own distribution offices -- Vancouver, Calgary, Winnipeg, Toronto, Montreal and Halifax -- and we are slowly establishing a few more.

MR. WHITELEY: You are referring now to appliances other than television?

MR. MARPOLE: No, I am referring to television receivers. Our factory service relates almost entirely to television receivers. We do maintain service organizations in each location, but they are not generally there for the public. They are for the dealers themselves who get into trouble and need help. Perhaps some problem is a little beyond their experience. But we cannot possibly -- and again I think representatives of other companies will bear me out -- undertake to set up service for all the television and radio receivers sold. It is a physical and



financial impossibility for any one company to attempt to do that.

MR. WHITELEY: Is your company doing service ---

MR. MARPOLE: No, it is more in the nature of making available to our distributors.

MR. WHITELEY: What are your service arrangements with respect to white goods?

MR. MARPOLE: They are mostly by the distributors themselves -- retail outlets. Here in Montreal we have a somewhat more extensive operation of service than we had on our other companies. It is not a very important point, but it does go to the importance of keeping our dealers in business and being there, available to the purchaser who may have need for their further services either under the warranty or any service beyond the warranty.

MR. FINLAYSON: I believe, Mr. Chairman, what Mr. Marpole said about the service warranty and arrangements is applicable to all manufacturers in television and radio receivers. Generally speaking a guarantee means defects in material and workmanship for 90 days with the labour to be borne by the dealer. In the case of radio sets it is the pattern. In the case of television sets we offer the same guarantee as far as our material is concerned, but on the big picture tube one year is more the normal length of the manufacturer's warranty, but not to include





the cost of labour on replacing it.

THE CHAIRMAN: Isn't there a difference, that in the case of television sets the cost of any service is added to the list price, whereas in the others it is included in the list price?

MR. FINLAYSON: Generally speaking, yes, and within certain limits established by us. We ourselves do not maintain any service organization across Canada as such, in the sense of working at the consumer level, but we do maintain a country-wide schooling system for training dealers and other service men, and we do attempt to control the quality of service and to step in when any crack appears so we can assist the public the best we can. As Mr. Marpole said, it is quite impossible to have a representative of the particular firm in every small town and village across the country.

MR. GERIN-LAJOIE: I would like to have a clarification, if possible, from Mr. Marpole first: If I understood you, Mr. Marpole, you mentioned that according to your experience there are a number of retailers actually selling at lower prices than the suggested prices who do not have a sufficient mark-up to do business. If I understood you well, and if that is right, what would be a sufficient mark-up, roughly speaking, according to your experience?

MR. MARPOLE: Perhaps it is not up to the manufacturers to say what the retailers need, but



our general ---

THE CHAIRMAN: It has been suggested to us that nobody was better qualified to do that than the manufacturer

MR. MARPOLE: Well, we have very long and broad experience in the field, and I would like to make it quite clear here that I am substituting on rather short notice for our Vice-President, so the information I have got has been rather hurriedly collected, but our feeling is that a dealer, to meet his expenses -- and he has got to take into consideration all his expenses -- depreciation, and a lot that are sometimes forgotten and overlooked -- needs something in the neighbourhood of 18 to 20%.

MR. WHITELEY: On what goods?

MR. MARPOLE: I am speaking of our lines of radio receiving sets, television receivers and the allied goods that are usually found in the type of store that deals in what I think you might generally describe as appliances.

MR. WHITELEY: You refer to electrical appliances generally?

MR. MARPOLE: Yes.

MR. GERIN-LAJOIE: On a large appliance or any appliance -- any large appliances like radio and T.V. sets, or also small ones like toasters, and so forth?

MR. MARPOLE: There is usually a mixture in there, and the figures I am referring to now



certainly relate to our line of goods. The discounts vary from a top of very little, if any, over 35% down to something around 20. That is the discount from the suggested list prices, and they average out, as I understand it, at about 28%, which we estimate will allow the dealer, taking the average across the country 8% before taxes. If it is of interest to the Board I will be very happy to go further into those. I am not in a position to answer very many questions for the reasons I have explained. I will answer any I can, and if there are any I cannot I will endeavour to get the information and submit it.

MR. GERIN-LAJOIE: When you mentioned reduction on the list price, which I will call mark-up for the purpose of this questioning, when you mentioned 20% would that apply to every retailer or is it possible, in your opinion, that the retailer might be able to do business with a 17% mark-up and another one would require 25%?

MR. MARPOLE: I think that is the usual figure. I don't think it is possible to say everyone can do business on the same basis. Some are able to operate better than others.

MR. GERIN-LAJOIE: With price maintenance as we had it two or three years ago, don't you think it was impossible for a retailer to pass on to the customer the benefit of a lower operation cost -- if the overhead is not the same for every one?



MR. MARPOLE: Now you are asking me to get into a debate on the thing. I am here to try and give factual information.

MR. SAMIS: I think I can answer that question. At the time resale price maintenance was in effect, on major appliances such as radios that was affected by turn-in values. They were allowed to offer more than the old radio was worth. That practice was common and done to a certain extent; we were not unconscious of the fact.

MR. GERIN-LAJOIE: If someone had nothing to trade-in, if someone would like to buy a T.V. set, and we had price maintenance, there would not be any possibility of reducing the price to the customer?

MR. SAMIS: Oh, yes; price maintenance was never enforced that rigidly. It was very frequently possible, if you had no turn-in, to go to an appliance store and buy for cash maybe at 10% off list price.

MR. GERIN-LAJOIE: Do you think that could be done on a large scale under price maintenance?

MR. SAMIS: It was done on a large scale and was a fairly common practice.

MR. GERIN-LAJOIE: Would it have been possible at that time to advertise lower prices?

MR. SAMIS: The manufacturers frowned upon advertising.

MR. GERIN-LAJOIE: Am I right, I believe that I was told that the mark-up on T.V. sets, for





instance, now is about 1/3 of the retail price; is that correct information according to your knowledge?

MR. SAMIS: I am not prepared to answer that question precisely.

MR. FINLAYSON: I can answer that in part by saying that in the case of my own company the discounts range from about 28 to about 33%.

MR. GERIN-LAJOIE: Some of you gentlemen just mentioned that an average mark-up of 20% might be sufficient: what would be the explanation for the difference between 20 and roughly 30?

MR. FINLAYSON: I would suggest it has a great deal to do with the type of instrument and the stage which the business has reached. I don't think you can say there is a flat kind of mark-up to be applied to all kinds of appliances equally or evenly. I would suggest that in the case of a subject such as television you have inherently a necessity for a somewhat larger margin than with an established line.

MR. GERIN-LAJOIE: Could you explain why?

MR. WHITELEY: That seems to me to be directly contrary to the statement made by Mr. Marpole earlier that television was given a reduced mark-up.

MR. FINLAYSON: Yes, but in each case you have a wide variety of volumes and classes of dealers and sizes of communities, and it seems to me that in many cases it is very difficult. All



I can say is that you cannot say a particular discount is exactly -- you have a wide range of communities and ranges in products.

THE CHAIRMAN: I think Mr. Marpole said that according to their experience in what he thought would be right, that the average dealer would need from 18 to 20%; if that is true, and the average mark-up in your case is from 28 to 33% -- oh, average discount?

MR. FINLAYSON: No, those are the ranges.

THE CHAIRMAN: Well, they range from a low of 28 to a high of 33 -- just as you like -- that still leaves about 10% above the average.

MR. FINLAYSON: I am not prepared to give you the makes, but that might bring it way down.

MR. MARPOLE: What I endeavoured to say was that we felt on the average a dealer needed 20% to meet his costs, and at an average of about 28%, would earn 8% before taxes. He cannot stay in business just covering his costs; he must have a profit and the difference between the 20 and 28 is his margin of profit before taxes. Our discounts also vary on a somewhat wider range depending on the model, the dealer himself and the quantity he buys and the community he is in, and so on; ranges from something about 20% up to, well, 35 would be high. That would be the very top, quantity discount added on and so on. As Mr. Finlayson has explained they vary with the product, the models and even with time. Sometimes



it is necessary to reduce prices to clear goods. I have endeavoured to give you just the general brackets and the ranges.

MR. FINLAYSON: Perhaps we can get a little more information and submit it later.

THE CHAIRMAN: Yes, if you can.

MR. FINLAYSON: We have only prepared very general information.

THE CHAIRMAN: If you can give us more specific information on that, we will appreciate it.

MR. GERIN-LAJOIE: Having this in mind, Mr. Finlayson, and particularly the opening statement in that respect regarding the unavailability of statistical information now, may I ask you on what grounds, or what makes you feel that your opinion of two or three years ago regarding the abolition of resale price maintenance is now fully borne out? Is it only a fear of the future, or is it an opinion based on facts and experience?

MR. FINLAYSON: Mr. Chairman, I believe I can answer that, and I hope usefully. I believe that most manufacturers are interested in creating a condition of healthiness and prosperity and stability in the trade in their own interest and public and everybody else concerned. What we see -- I don't know that I would say we fear, because in this day and age we are getting past fearing because there are so many things to be feared of -- but let us say we see a



situation such as Mr. Marpole has indicated of increasing difficulty amongst the retail trade, and we feared from the beginning of the abolition of price maintenance that the abolition itself would tend to increase the difficulty. I am not going to say it was the sole cause of the difficulty, by any means, because there are many others, but rather the one fact that might have retained the stability has been removed from the picture, and we feel that the experience over the last two or three years has borne out our original concept of what might be expected to follow. Whether we are right or not is a very, very difficult thing to support by detailed evidence, but I rather suggest your inquiry would not be being carried on if there were not some difficulties in the trade, and we feel that one logical and reasonable thing which might have improved stability was removed.

MR. GERIN-LAJOIE: I don't want to be embarrassing, but you say "in your opinion"; I wonder if the stability you have in mind in the trade would not be to a large extent contrary to the competition which has been considered for a great number of years essential to a free trade economy?

MR. FINLAYSON: No sir, I don't think there is anything illogical in the position, because competition is created in many different ways, and as we say at the beginning of the brief, there are more than 20 people at the





manufacturing level competing, and they are offering a very wide range of products and a variety of prices. Obviously there must be some variations in their discounts, and so it seems to me that there is a very considerable element of competition in this business. At least it is not the kind of business where we have ever lacked competition, certainly not in the 30 years I have been involved in it. Consequently we don't feel that any additional competition factor is required to assure good service and best prices in the interest of the public. In other words there are too many people involved in the manufacture and wholesaling of the models. There will never be anything like<sup>a</sup> stereotyped condition; I cannot conceive of it.

MR. GERIN-LAJOIE: Do you believe competition is less necessary at the retail level than at the manufacturing level?

MR. FINLAYSON: No, I don't want to give that impression at all, because I think we must not overlook the fact that price is only one element -- it is a very important one -- but I feel that competition really is the life of the business, but there is some question as to how far that competition can go and still remain clean and healthy. My opinion is that we have so much competition now that I cannot imagine that there would be any restriction imposed by some control at the manufacturing level. That is



all I am trying to say. I must make it very clear we are in favour of competition absolutely, but it is somewhat doubtful in our minds that the competition that is with us today is as desirable as it might be. I want to illustrate a point by going from the sublime to the ridiculous: We have been told, and I have no proof of it, that a certain television set -- my own company -- which we sold to the retailers for \$139.97 was offered to the public for \$139.95. I suggest that competition hardly ought to go that far to provide the public with a good choice of products and prices.

MR. GERIN-LAJOIE: Could you suggest what competition there is at the retail level, in your opinion, apart from price these days -- in your particular field of television?

MR. SAMIS: Yes, I shall endeavour to deal with that. The different forms of competition are the different functions which a dealer is required to perform in the course of merchandising a product. He must be strategically located in the community; he must have certain facilities, such as floor space for demonstration; he must have an adequate and well-trained sales staff; he must have sufficient capital to operate his business properly, and he must have an established and well-trained service organization, and a number of other features which I cannot bring to mind but which I am sure have been enumerated



before this Commission. There can be competition in almost every one of those areas. One man can build up a reputation for servicing appliances to a much better degree, and more promptly, and more satisfactorily, than another, so he gets more clientele, but prices may be the same.

MR. GERIN-LAJOIE: This question of servicing has been brought up to the Commission a number of times by the manufacturing industry, and the Commission was told by the retail level representatives that in many instances apparently the manufacturers looked after the servicing, so that in certain instances servicing was an additional charge and a servicing company was given the duty of looking after that part, so that the retailer, in effect, had no servicing to do. What would be your views on that?

MR. SAMIS: My views are identical with the company I am associated with, and our experience is identical with that of Mr. Marpole and Mr. Finlayson, and between the three of us we are certainly large operators in the field of radio/television. We do not attempt to maintain any service organization which deals directly with the consumer. Any service organization which we maintain is for the purpose of educating dealers so that they can deal satisfactorily with the consumer. That is the principal purpose of any organization we have. It is only in a very rare case, where something has cropped up in the field which no dealer



organization is able to cope with, that we ever make contact with a consumer in that manner.

MR. FINLAYSON: I heartily support Mr. Samis, but I am sure he meant whether the retailer himself owns and operates the service, or whether he sub-contracts it, the position is just the same. I know in many cases we have ourselves been called in to approve general service organizations as having the requisite staff, and so on.

MR. GERIN-LAJOIE: Would you be prepared to give any rough figures or an idea of whether the production in certain appliance fields has declined or not during the past two years?

MR. FINLAYSON: I am afraid we cannot answer that, Mr. Chairman, for the reason I mentioned before. The sale of television receivers has definitely gone up. I am not prepared, and I don't think my colleagues can, to deal with the other appliances because we are not informed on the point. But the upsurge in the sale of television occurred during this same period, and I would not like to draw any conclusions whatever from the relation between the two, because personally I am convinced television would have upsurged anyway. The sale of broadcast receivers has been remarkably stable in spite of the competition from television, but there again it is very difficult to discern exactly the effect of one on the other, and it would be impossible at this time to produce reliable statistics of the kind you ask. I





can assure you there is no connection -- or if the connection exists it is a minor one -- between the upsurge in T.V. sales and the abolition of price maintenance. They are accidentally coincidental.

THE CHAIRMAN: Would you make the same comment about the steady level of radio receiving sets?

MR. FINLAYSON: I can't exactly. I should have gone a little further and qualified my remarks by saying that the steady level of broadcast receivers -- when I say "steady" I should have said "relatively steady" -- because although we have experienced an increase in one market, we have experienced a decline in other markets. I would say about 1956 we will be over it. What I have been trying to say is that there is nothing in the broadcast receiver market we can attribute directly to price maintenance.

MR. GERIN-LAJOIE: On page 2 of your brief gentlemen, you envisage the possibility which has been mentioned at times that legislation might be passed to prohibit loss-leadering itself, but you go on to say it would be so restrictive "as to put an unbearable burden upon enterprise. . .": Is it your view that retail price maintenance would not be so restrictive on trade and competition?

MR. FINLAYSON: What we have in mind there, Mr. Chairman, is this; that if you had full resale price maintenance, presumably each manufacturer will



deal with his own problems affecting his particular merchandise, and therefore there would be for any given brand-name an internal and self-regulating condition as between the manufacturer and his sales outlets. But we rather feel that if the attempt were made to control loss-leadering -- by the way, we are not quite sure how to define that ourselves, so I take it as a broad statement -- by control at the retail level, it would seem to me that there would have to be some form of policing or other effort at the retail level and, with respect, by some Government body for each and every product in the retailer's store continuously throughout the year. So that we see there would be a tremendously greater intrusion into the retailer's affairs of necessity, and in the retailer under resale price maintenance understood what his manufacturer's attitude was, and they worked along together, we see -- in other words gentlemen, I think perhaps to simplify it, under resale price maintenance you may have a discussion and negotiation as to the degree of control between the two parties, but when you come to the set form of the thing it seems to us a third party is introduced and that the load upon the retailer would be very considerable indeed.

THE CHAIRMAN: Do you suggest, Mr. Finlayson, that giving the manufacturer control over the resale price is a completely safe arrangement in the interest of the public?



MR. FINLAYSON: I would hesitate, Mr. Chairman, to say that anything is completely safe, but I do feel that it is the most practical.

THE CHAIRMAN: I think you gentlemen were all present earlier this afternoon when Mr. Crelinsten mentioned that one appliance he was selling, and which required a higher voltage connection in the house in order to be used properly, that he advertised he would make the switch-over if people purchased these implements from him, and that the manufacturer apparently thought that was an unfair procedure and indicated that he should stop doing that "or else". Would you think that is something in which the manufacturer should intervene?

MR. FINLAYSON: I find it difficult to comment usefully on that, but it seems rather odd on the surface, but I would like also to talk to the manufacturer and see what his problem was. Not knowing it, it is very difficult to say. I admit on the surface it is odd, but I feel sure there must have been some cogent reason behind it.

THE CHAIRMAN: On the face of those facts it seems like fairly strong control.

MR. FINLAYSON: One, of course, must admit that control involves some requirement of strength and solidity, and it also requires very great responsibility in the broadest sense of the term, and speaking for our own industry, which is the only one I am really competent to speak for (and I am afraid I am not too competent on that) I must



say that on the whole, as Mr. Samis indicated, manufacturers even under the original condition where they were able to maintain the list, did take quite a liberal or catholic view towards the thing, because we all recognized from time to time dealers get into some kind of difficulty, and Mr. Samis said the practice of trade-ins was quite a normal one, and we never felt we could dictate to a dealer precisely what he should pay for such-and-such an old model whose condition we knew nothing about.

THE CHAIRMAN: You could not do that?

MR. FINLAYSON: No, you could not, and that is what I mean, that practical application is the thing that impresses us.

THE CHAIRMAN: One thing raised in my mind; I think Mr. Samis said the practice of more liberal trade-ins was pretty general, is that correct?

MR. SAMIS: I think perhaps that is what I said. It is not general all over the country or at one time, but it happens in one place and another at various times.

THE CHAIRMAN: what I mean is, if the practice of allowing very generous trade-ins, meaning trade-ins at a higher level than the retailer could obtain on a resale of the goods, if that is fairly general do you consider that the regular mark-ups are really necessary?

MR. SAMIS: That is true, if it were general throughout the whole country all at one





time I would agree with you, but that is not actually the way it occurs.

THE CHAIRMAN: It raises that question in my mind fairly definitely. If it is a general practice it would seem to me that the dealers generally didn't think it necessary to maintain that margin for themselves?

MR. SAMIS: I would agree with you if it were really general, yes.

MR. FINLAYSON: Perhaps this remark reminded me of this point about competition, and this business of the harsh control by manufacturers, and that is that in our industry at least with 20-odd manufacturers all making good products, the dealer himself has a very wide range of choice, and he is by no means compelled to stick to any particular manufacturer. The dealer has considerable flexibility, and I think that largely helps to answer the point that if a manufacturer was so stupid as to impose, under resale price maintenance, harsh unrealistic policies, then the dealers have many places to go, and I suggest the end of such a manufacturer would be even worse and quicker than the bankruptcies Mr. Marpole was talking about. If any one of the three firms represented by us did such practices there is little doubt the dealer would turn to one of the others and get the goods.

MR. GERIN-LAJOIE: That comes back to competition among manufacturers?



MR. FINLAYSON: Yes.

MR. GERIN-LAJOIE: I wonder if Mr. Marpole could qualify something he said: He mentioned during the last year a number of bankruptcies, as high as 10 times the average for the past 5 years; would you have the rough figures available now?

MR. MARPOLE: May I get those figures and give them in writing? This is a public hearing and I am quoting what are considered private figures.

THE CHAIRMAN: We would be very glad to have the figures submitted separately in writing, and let us have the source of the information at the same time you give us the figures.

MR. MARPOLE: Yes; that information I got from our Treasurer this morning and he gave it to me in percentages and I have quoted it here in relative terms rather than exact ones. I will be very glad to submit those in writing.

THE CHAIRMAN: Those are of your own company?

MR. MARPOLE: Yes sir.

MR. FINLAYSON: I can support Mr. Marpole, although I have no detailed figures, that there has been an increase, there is no doubt, in that sort of thing during the last two or three years.

MR. GERIN-LAJOIE: Would those bankruptcies, would those dealers have been almost exclusively television sets, or having a great variety of appliances?

MR. MARPOLE: I am sorry, I don't know. I



will endeavour to include that in the information.

THE CHAIRMAN: I don't know whether this would be feasible, but if Mr. Marpole could let us have the information geographically it may help -- whether the bankruptcies have been uniform across Canada or whether they have been heavier in Quebec or The Prairies, or in large centres of population, or something like that?

MR. MARPOLE: Yes, I will endeavour to do that.

MR. GERIN-LAJOIE: Regarding these bankruptcies, and generally speaking of what some people call the plight of the retailers at the present time, I wonder what you gentlemen would have to say on some comments found in an article taken from the Hardware & Metal, July 18th, 1953, pointing out mainly that the causes for this present plight would be too many retailers, over-production, and thirdly, unrealistic suggested prices. They say in reply to a Hardware & Metal question -- let me say no reference is made to resale price maintenance, the consensus being that, if anything, manufacturers for one reason or another must accept the main responsibility for the retail trade supplying it, and later on, "We really think the manufacturers are producing more appliances than the market can take care of . . ." -- well, I won't read the whole thing, but generally speaking I would like to know from you gentlemen what would be your view on such a position taken by the .



hardware industry -- particularly with respect to appliances.

MR. FINLAYSON: I am afraid, Mr. Chairman, we have not got anything very useful or definite to reply to or to rebut that statement, but it does seem to me to be one of those rather general statements, and I am slightly amazed at the reference about most of the troubles being laid at the manufacturer's door. I thought the cup of sin in the manufacturing industry was already overflowing. I really must be general in saying there are admittedly difficulties here and there, but I cannot see that the manufacturer can be held quite as fully responsible as the words seem to suggest, and I would like to make another point very clear, and that is that in the field of television receivers there is a question that over-production exists, and I think I am on safe ground in saying it would not exist in 1953. There may have been some cases of it, but it was not a factor during that year.

THE CHAIRMAN: I don't think you could make any specific contributions unless you made a study of the circumstances?

MR. FINLAYSON: That is right.

MR. GERIN-LAJOIE: The question comes up, particularly after hearing the representatives of the discount houses, whether lower prices by the discount houses do not broaden the market generally speaking and call for a high production and higher circulation of goods -- I should not





say "call for", but have that as a consequence.

MR. FINLAYSON: Again, sir, the reply will be somewhat general. It is our view that the inclusion of any new method, or the extension of an old method, may have a temporary effect of broadening the market, but we are inclined to doubt if over a period of years it has any material effect at all.

MR. WHITELEY: What is that?

MR. FINLAYSON: The question, as I understood it, was whether the intrusion of discount houses and cutting prices has broadened the market for goods, and I am trying to say that we are dubious as to whether the broadening is of anything more than an interim character.

MR. WHITELEY: Are you disassociating that from the change in price?

MR. FINLAYSON: Yes, I am trying to do that. What I am trying to say is, if somebody brings out a low price, and that thing becomes a definite and solid pattern, there may be something to it, but we in our industry have not had enough experience to say that over a period of 10 years we will, in fact, sell more television sets. That is what I understood the question was. We would not like to say it is so.

MR. WHITELEY: I notice from advertisements that on occasion some initiative is taken by a manufacturer to make quite a reduction in regard to a particular model: Do you say that is



not done in order to widen the market for that model?

MR. FINLAYSON: Oh yes, but what I am trying to say is, we are a little dubious as to whether one can say that what is going on now, as I think your counsel has suggested, the intrusion of discount houses in the television market will produce a long-term broadening of the market. I will say this, that obviously anything that will hold down the general level of prices and still permit the manufacturer, wholesaler and retailer to make a reasonable profit will obviously broaden the market.

THE CHAIRMAN: And if prices in the discount houses continue to be over a long period substantially lower than they are in other retail establishments will not that have the very same effect in inducing a number of people to buy who otherwise would not have bought?

MR. FINLAYSON: If after a number of years a new pattern is established, I think the answer must be yes.

THE CHAIRMAN: That leads to another question; You gentlemen are all manufacturers, and I think you all heard Mr. Crelinsten's observation that manufacturer's articles in the field in which he operates, which is in part the same as your company, the products they are turning out are, generally speaking, so well-made and so well-advertised that the selling problem is much less



than was formerly the case, and that new patterns of retailing methods have been or are being developed. I would like to have your comment on that series of observations.

MR. FINLAYSON: First, I should thank Mr. Crelinsten for his complimentary remarks about our industry. Again I find myself in some difficulty. I believe that the goods of all manufacturers are all of very excellent quality and the product stands up very well. I don't think there can be much doubt about it, but I would not like to try and say that about some other appliances, because I am not equipped to do it. Dealing with the advertising feature, I am not personally conscious that the effort of advertising in the last couple of years has been necessarily a great deal greater relatively than it was very many years before at different stages of the development of the radio receiver. We would have to make a very careful survey to cover that situation.

THE CHAIRMAN: There is an accumulative effect of advertising, I would think; I would think the accumulative effect of advertising over the years by one manufacturer of his products, and if those products have generally been found satisfactory, then when a new product comes along that company reaps some benefit, and that the advertising therefore tends to snowball to some extent?



MR. FINLAYSON: Yes, and then I think it is important, perhaps, to realize at least in the field of television we have also got something quite different from what we experienced before, and there is no doubt in my mind -- I am not trying to sing a song for advertising our industry -- but there is no doubt in my mind that T.V. in particular has a tremendous appeal individually, even without advertising. So, I think perhaps it is sufficient to say that there is no doubt that any industry which puts out a reliable product, which advertises heavily or even moderately well, and which at the same time, as in the case of T.V., is offering something of a rather new and extremely fascinating character to the public, must necessarily be able to assist the trade all round. I think that is as much to the benefit of the wholesaler as the manufacturer. Anything that fascinates the public must necessarily gain acceptance, and any acceptance, I would think, goes all along.

THE CHAIRMAN: Do you think there are any signs that the change in retailing methods in the television and other appliance and instrument fields in any way parallels what took place in groceries 25 or 30 years ago?

MR. FINLAYSON: It may be, sir.

THE CHAIRMAN: It would cut down the operating costs of the retailer?

MR. FINLAYSON: It may be. Again I would not like to speak for other appliances, but it





may well be gradual; as time goes on new patterns are being established. There is one thing in particular that I think is important to this problem, and I think Mr. Crelinsten mentioned it, and I believe he mentioned the point, or somebody did, that when a television receiver is sold the dollar volume transaction is very much greater than in the case of the ordinary broadcast receiver. and so again, at least at the retail point of view, a much greater volume may be possible in dollars with a much smaller number of transactions, and that will have a bearing on costs and discounts, and all the rest of it. I am personally a strong believer in the fact that nothing stays still, and I think the Radio Manufacturers Association is thoroughly convinced of that because of the nature of the business we are in. All we are anxious to do here is to suggest that additional legislation may well slow down any trend of a beneficial character that is going on. We feel that very sincerely. That is the whole core of what we are trying to say here. Don't let us have a brand-new industry which contributes so much trouble, or even held down, by legislation which may be unnecessary.

THE CHAIRMAN: Thank you very much, gentlemen. Unless you have something further to add?

MR. FINLAYSON: I think we have nothing further, Mr. Chairman. We are grateful to you for the hearing and we would like you to feel that



our inability at this time to produce the volume of statistics is based upon the position in which we find ourselves, but I can assure you that a communication addressed either to myself or to Mr. S.D. Brownlee, Secretary-Manager of the Association in Toronto -- the present address is 159 Bay Street. We are going to move, but not for a month or so. My reason for suggesting Mr. Brownlee is that he, being in the offices of the Association, is naturally closer to the statistics, and in most events I would have to consult him, anyway. We are very much at your service, gentlemen, and I would like to assure you that in our particular case we are trying to look at this whole issue broadly and not to sort of jump on our perches too quickly until we feel we have more knowledge. Consequently we have tried to deal with principles rather than details.

THE CHAIRMAN: I would like to express our gratitude to you, gentlemen, for coming this afternoon and giving us the brief and the benefit of this fairly extensive discussion. We also appreciate very much your offer of assistance from your Association.

MR. FINLAYSON: Thank you. I must say I would like to express a special vote of thanks to Mr. Samis and Mr. Marpole for coming here on very short notice to support me. This is too big a subject for one individual to attempt to deal



with, and I am very grateful to both of them.

---A short recess.

(page 2201 follows)

(presentation in French)

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C A N A D A

PROVINCE DE QUEBEC

DISTRICT DE MONTREAL

CITE DE MONTREAL

COMMISSION DES ENQUETES SUR LES COLLISIONS

Président: Me C. RHODES-SMITH, c.r.

Commissaire: Me A. S. WHITELEY, c.r.

Me GUY FAVREAU, c.r.

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COMPARUTIONS:

Me PAUL GERIN-LAJOIE

Agissant pour le directeur des recherches

M. Roy DAVIDSON, économiste pour le directeur  
des recherches

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ENQUETE TENUE A MONTREAL, les 7,8,9, et 10  
juin, 1954, sur les ventes à pertes (loss leaders).

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Représentation de GENIN, TRUDEAU & CIE LIMITEE

le 10 juin, 1954

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Monsieur PAUL TRUDEAU:

MM. les Commissaires ,mon nom est Paul Trudeau, je suis le  
président de Genin, Trudeau & Cie Limitée, et j'ai ici avec  
moi monsieur Paul Dubuc, notre gérant des ventes et monsieur  
L.F.Fournier, notre gérant du crédit. Our brief will be read  
by our credit manager.





Monsieur L. F. FOURNIER:

Montréal, le 8 juin, 1954.

Mémoire sur les "Lost Leaders".

Ceci est un mémoire très succinct, du point de vue d'un grossiste, qui ne vend pas de cigarettes, mais toutes les marchandises, accessoires de fumeurs et qui sont vendues par les mêmes magasins, soit les tabacconistes, restaurateurs et autres."

Me FAVREAU, c.r.

C'est une de vos lignes ?

Monsieur TRUDEAU:

Oui, monsieur.

Me FAVREAU, c.r.

Vous n'êtes pas limités à cela ?

Monsieur TRUDEAU:

Non, nous avons sept (7) sources de débouchés différentes, nous vendons aux pharmaciens, aux magasins de fer, aux papetiers, aux bijoutiers et aux marchands généraux.

Me FAVREAU, c.r.

C'est un de vos départements ?

Monsieur TRUDEAU:

Oui, monsieur.

Monsieur L. F. FOURNIER:

"Comment sommes nous affectés, par la vente des cigarettes par les magasins à chaîne ?

Nous constatons que depuis près d'un an, il y a un ralentissement dans les achats des tabacconistes ou des restaurateurs, c'est à dire, ceux qui ont pour leur commerce un débit de 60 à 65 pour cent de la cigarette et dont la balance est pour des articles accessoires. Ce tabacconiste ou restaurateur qui ne reçoit plus chez lui, le client, pour la vente de ces cigarettes, ne recevra plus, non plus, le client pour la vente



de ses articles accessloires. Par conséquent, ce sera pour lui, la fermeture de son magasin, ou la faillite.

D'un autre côté, s'il veut continuer à attirer chez lui, le client par la vente des cigarettes, il devra lui aussi, vendre cette marchandise au prix coûtant, ou en bas de son prix coûtant. Comme le bénéfice réalisé sur environ 60 à 65 pour cent de son commerce, n'existe plus, il devra prendre ses frais d'opération et ses dépenses personnelles soit son salaire, sur la balance des articles qu'il vendra. Nous comprenons que le bénéfice est un peu plus élevé mais si nous tenons compte qu'il ne restera qu'environ 30 pour cent de son commerce, sur lequel il pourra faire un bénéfice quelconque, il lui sera impossible d'arriver ou de faire face à ses obligations et c'est là, ce que nous ressentons actuellement, soit le retard dans le paiement des comptes qui sont déjà en suspens de 4, 5 ou 6 mois.

Les résultats de cette affaire se font déjà sentir actuellement. Nombre de ces commerçants ont déjà fait faillite, nombre d'autres nous offrent des propositions pour règlement, qui sont pratiquement un état de faillite et si cet état de chose devait se continuer encore pour 6 mois, nous verrions ces commerçants disparaître au rythme de plusieurs milliers pour la première année.

Si vous jetez sur le pavé, plusieurs milliers de marchands, tabacconistes, restaurateurs ou autres, ceux-ci ont des familles, c'est-à-dire donc que vous jetez sur la pavé, des milliers de personnes qui seront ensuite à la charge de l'Etat. Ces gens iront grandir le nombre des chômeurs actuels, et qui devra subvenir à leurs besoins, qui devra fournir les travaux nécessaires pour employer tous ces gens, et dont une grande partie de ceux-ci ne sont pas aptes à aller travailler à des travaux de construction ou autres. La réponse est: le Gouvernement Canadien.

Est-il donc juste, pour protéger, ou sembler vouloir protéger le consommateur on aille augmenter ainsi le nombre des chômeurs? En définitive, qui devra payer pour faire vivre tous ces gens? Naturellement, ce sera le contribuable et par le fait même, ce sera le consommateur. Par conséquent, nous tournons ici dans un cercle vicieux, en voulant protéger le consommateur au détriment du marchand.

Nous admettons qu'il y a peut être actuellement trop de petits restaurants de maisons privées, dont les frais d'opération ne sont pas très élevés et qui peuvent suffire à obtenir un bénéfice suffisant, pour vivre, mais ces petits commerçants sont ordinairement des veuves ou des personnes atteintes d'infirmité quelconque et qui pour subvenir aux besoins de la famille, sans laisser leurs enfants, souvent en bas âge ont ces magasins dans leur maison privée. Ceci n'est peut-être pas très bon, pour le commerce en général c'est-à-dire, pour les autres commerçants mais d'un autre côté, si nous voyons la question économique du pays, ces petits commerces enlèvent au frais de la municipalité, de la province, ou de l'état, nombres de familles qui autrement,



seraient sur leur secours. Si le commerce des tabacconistes ou restaurateurs, était nettoyé de tous ces petits magasins, le résultat en serait probablement meilleur pour l'ensemble, mais actuellement la question est que, si les magasins à chaîne, continuent à enlever le commerce de la cigarette aux tabacconistes et aux restaurateurs, ce n'est pas simplement ces petits commerçants qu'ils feront disparaître, car ceux-ci n'ont pratiquement pas de frais d'administration, mais ce sont tous les commerçants, bona fide, qui ont une certaine mise de fond dans leur commerce qui devront disparaître en même temps.

Si nous voyons cette question sur la base économique du pays, que deviendront ces marchands et leurs employés si ils doivent fermer leur porte ? Nous sommes convaincus que les magasins à chaîne ne pourront absorber tout ce surplus de main d'oeuvre et que ceux-ci devront automatiquement revenir au chômage, et être à la charge de l'Etat. Actuellement, nous avons un nombre de chômeurs très alarmant et si, par une législation inapte à maintenir la libre concurrence sur une base équitable et honnête pour tous, celle-ci doit être changée afin d'éviter autant que possible, le déséquilibre économique du marché canadien. Nous parlons ici de la question de la cigarette, il y a aussi nombre d'autres produits sur le marché dont la même question est à l'étude.

Pourquoi, nous demanderez-vous, les magasins à chaîne ne peuvent-ils vendre leurs cigarettes à un prix de X, tout en faisant un léger bénéfice, si ceux-ci sont capables de supporter ce prix ?.

Je vous poserais la même question sur un autre ordre d'idée: Pourquoi le Gouvernement a-t-il une loi, du dumping, pour empêcher des marchandises d'entrer au Canada, à un prix réellement très intéressant, pour le consommateur, puisque cette marchandise venant du Japon, d'Allemagne, ou d'autres pays d'Europe, peut être vendues sur le marché canadien, avec bénéfice à un prix plus bas que les marchands canadiens peuvent acheter leurs marchandises de nos manufacturiers.

Le Gouvernement emploie alors une loi, pour empêcher ces marchandises de venir tarir le marché canadien. Pourquoi dans ce cas, protège-t-il le manufacturier au détriment du consommateur ? Vous me répondrez que c'est là une question économique du pays. La même question et la même réponse s'applique dans les cas de marchandises vendues en bas d'un prix raisonnable ou sans bénéfice, par des marchands canadiens même si ces marchandises sont achetées sur le marché canadien. Il y aurait là, la même loi du dumping qui devrait s'appliquer bien que cette marchandise n'est pas une importation du pays, mais pour la protection du marchand, et non du consommateur. Dans toute cette question, il n'y a pas simplement le point de vue du consommateur à protéger mais il y a aussi toute la base économique du pays.

Pour la plus grande protection du consommateur,





"Il serait possible d'établir un montant de profit raisonnable et minimum qui pourrait être établi, pour la revente des cigarettes ou autres marchandises semblables. Ce n'est une protection pour personne que de vendre des marchandises au prix coûtant ou à un prix plus bas que celui que l'on paie.

Dans le cas de cette vente de cigarettes, si tous les marchands étaient tenus à au moins 11 ou 12 pour cent de bénéfice, comme minimum, ceux-ci pourraient rencontrer leur coût d'opération et avoir un certain gain pour le service qu'ils donnent à leurs clients. Dans ce cas, vous ne direz peut-être que le marchand à chaîne peut acheter sa marchandise du manufacturier à un prix beaucoup plus bas que le détaillant ordinaire parce qu'il peut avoir un compte direct. Si le prix suggéré du détaillant au consommateur peut être accepté il pourrait aussi y avoir le prix suggéré du manufacturier au détaillant direct et qui protégerait en même temps le grossiste et éviterait que ces magasins à chaînes achètent à un prix que le grossiste ne peut accorder à son client à moins de vendre lui-même sans bénéfice. Que deviendrait alors la distribution?

Si les marchands à chaîne désirent attirer le client chez-eux, qu'ils prennent plutôt un article dont ils sont les distributeurs, soit la viande, les fruits, les légumes et qu'ils attirent le client avec une réduction de prix sur leur viande, leurs légumes ou autre marchandise, mais non pas se servir de la marchandise d'un autre commerce au risque de tuer le commerce de milliers d'autres marchands.

Que font-ils pour agir de la manière qu'ils le font ? Ils vont chercher une marchandise qui appartient à un autre genre de commerce et dont il leur est très égal que le marchand, qui ne peut leur nuire dans leur compétition, fasse faillite ou non. C'est donc à l'autorité compétente à protéger ces marchands ou ces commerces contre la concurrence déloyale faite par un autre genre de commerce, en s'appropriant une marchandise qui ne leur appartient pas. Cette concurrence serait moins déloyale, si elle se faisait exclusivement entre tabacconistes, mais comme elle est faite par un marché dont la cigarette n'est aucunement la base de leurs ventes ou de leur bénéfice, il leur est égal de vendre ce produit au prix coûtant ou même avec perte.

Il est donc nécessaire que cette question soit étudiée et qu'une décision soit donnée le plus tôt possible car plus cette décision retardera, plus le commerce en sera affecté et plus le nombre de faillites augmentera dans la Province.

Lorsque les faillites se produisent, qui en souffre ? D'abord le marchand lui-même, les Gouvernements par leurs taxes, les distributeurs par la perte de leur argent, et les manufacturiers par la perte de leur marché. Cette répercussion se fait donc sentir d'abord en amenant au chômage le commerçant et sa famille, ses employés, en diminuant le nombre d'employés chez les distributeurs, du fait de cette campagne ou de ces ventes à pertes qui diminuent les profits





réalisés et par conséquent réduisent le commerce en général, et si le distributeur ou le grossiste est obligé de réduire son personnel pour arriver, c'est qu'il y a moins de ventes et s'il y a moins de ventes, lui-même fait moins d'achats chez le manufacturier qui en retour devra réduire sa production.

Vous ne voyez donc là aucune raison de tenter de protéger le consommateur puisqu'en définitive, le consommateur aura à payer beaucoup plus qu'il ne paierait si on lui donnait une protection telle qu'en évitant le bénéfice ou les profits excessifs, tout en laissant au commerce un bénéfice nécessaire et normal pour la marche des affaires et l'économie du Pays tout entier.

On a parlé de meilleurs distributions dans les marchandises et par le fait même, à un prix réduit, dans l'administration de cette distribution qui pourrait être à l'avantage du consommateur. Ce n'est pas obtenir une meilleure distribution que de faire disparaître la moitié des commerçants actuels, puisqu'alors le consommateur lui-même, pour obtenir le même service, devra lorsqu'il a besoin d'un paquet de cigarettes à 10 heures du soir faire deux, trois ou même quatre coins de rue pour l'obtenir et probablement se présenter chez un tabacconiste qui aura fermé ses portes à 8 heures ou à 9 heures du soir, tandis que le commerçant du coin reste ouvert jusqu'à 11 heures ou minuit afin de donner du service à ses clients. Naturellement le tabacconiste qui ouvre ses portes de 8 heures du matin à 6 heures ou 7 heures du soir, emploie moins de personnel que celui qui reste ouvert de 8 heures du matin à minuit le soir. Par conséquent celui qui a des heures aussi longues devra avoir des remplaçants, soit des commis supplémentaires car il lui est impossible d'agir seul environ 16 heures par jour et 7 jours par semaine. Il faut donc des remplaçants, c'est pourquoi, vous rencontrez chez tous les tabacconistes ou les restaurateurs de bon renom deux ou même trois employés. Si vous fermez donc ces magasins, vous fermez autant d'emplois et le service devient même moins bon au consommateur lui-même.

Le crédit actuellement sur le marché canadien est à la baisse. Nous rencontrons des difficultés dans la perception de nos comptes, à peu près dans tous les districts du Canada. Les raisons, ce sont les grèves dans certains districts, le chômage dans certains autres districts. Nous devons tenir compte de nombres de facteurs qui surviennent actuellement à travers tout le Canada pour pouvoir maintenir le chiffre des ventes à un niveau assez élevé afin de garder la production à un niveau normal et de faire réduire le nombre de renvois chez les producteurs. Pour cela les départements de crédit doivent tolérer, prendre des arrangements afin de pouvoir continuer ce chiffre de ventes et en même temps faire la perception de leurs comptes. Ces arrangements, ces tolérances coûtent beaucoup plus cher au grossiste pour l'administration de ces comptes et si nous sommes prêts à accepter ce coût supplémentaire dans l'administration de ces comptes pour maintenir un marché raisonnable, nous ne voyons pas pour-



quoi le Gouvernement ne pourrait pas lui-même faire sa part dans cette entreprise, en donnant une décision qui donnerait aux marchands détaillants un bénéfice raisonnable dans la vente de leurs produits et qui, même s'il le faut, déterminerait le prix de la revente des marchandises à un prix X, tout en permettant au manufacturier de canceller les commandes faites par des maisons qui voudraient couper les prix de ventes en bas du prix suggéré.

Ceci n'est pas une dictature mais bien une protection que le Gouvernement peut donner. Actuellement, le Gouvernement agit de la même manière pour maintenir le prix du beurre, des oeufs, des patates, du blé et différentes autres marchandises sur le marché Canadien. Il donne même des primes afin de maintenir ses prix. Pourquoi agit-il ainsi ?

Le Gouvernement agit ainsi justement pour protéger l'économie du pays tout entier et s'il peut agir de la sorte pour certains produits, il le peut naturellement pour d'autres qui viendraient briser cette économie du pays.

Respectueusement soumis,

GENIS, TRUDEAU & CIE LIMITEE

L. P. Fournier, n.c.i.  
Gérant du Crédit.

Président du Canadian Credit Institute  
Gouverneur du Canadian Credit Men's Trust  
Ass.

- - - - -

Vous avez à la dernière page une statistique préparée par D

Dunn & Bradstreet of Canada, établissant les faillites chez

les marchands détaillants canadiens; nous avons pris sim-

plement les marchands détaillants et voilà les chiffres:

En 1950 - 349 faillites pour un montant de \$4,347,000. ;

En 1951 - 387 " " " " 5,693.000. ;

En 1952 - 418 " " " " 6,885.000. ;

En 1953 - 568 " " " " 11,779.000. ;

En 1954 - 214 " " " " 5,252.000. ;

pour trois mois.

En dessous vous avez un tableau comparatif pour les trois premiers mois de cette année, c'est-à-dire les



trois premiers mois de chaque année comparés avec les trois premiers mois de cette année, vous voyez vous avez pour 1950, 1951, 1952, 1953 et 1954. Vous verrez qu'en 1950, il y a eu 95 faillites pour \$1,243.000.; en 1951, 106 faillites pour \$1,287.000 ; en 1952, 120 faillites pour \$2,004,000. ; etn 1953, 136 faillites pour \$2,534,000. et en 1954, comme je l'ai dit tout à l'heure, 214 faillites pour \$5,252,000.

Plus bas, sur ce même exposé, vous avez le pourcentage de l'augmentation sur 1952, en 1953, vous avez 13.3% en nombre et 22% en valeur; en 1954, vous avez 79% en nombre et 162 en valeur.

Si nous tenons compte que les faillites de 1953 se divisent comme suit par trois mois -

136	123	139	170
2,004	2,193	1,282	1,406

vous constatez que les 9 premiers mois se divisent à peu près également et que les trois derniers mois de l'année ont augmenté en nombre.

Comme nous avons 214 faillites dans les trois premiers mois de 1954, nous présumons un nombre de 856 et plus pour 1954, nombre qui serait une augmentation de 100.04%.

Lorsque nous parlons de milliers dans la déclaration, vous constatez qu'il ne faudrait pas que les choses empirent pour dépasser ce chiffre et nous ne tenons aucun compte des grossistes ou Jobber dans ces chiffres.

Me FAVREAU, c.r.

Vous dites qu'en 1954, il y aurait eu 79% en nombre ?



Monsieur L. F. FOURNIER:

Oui, monsieur le Commissaire, nous tenons compte des faillites en 1953, comparées à celles de 1952, tel que vous le constaterez sur le mémoire.

Me FAVREAU, c.r.

Est-ce que l'un ou l'autre des autres membres ici présents désirent ajouter quelque chose avant que Me Lajoie pose des questions ?

Monsieur TRUDEAU:

Non, merci, monsieur le Commissaire.

Monsieur DUBUC:

Non, monsieur le Commissaire.

Me LAJOIE:

J'aurais seulement quelques questions en ce qui concerne les statistiques que vous avez données à la dernière page. Est-ce que vous avez des raisons quelconques d'attribuer le nombre de faillites à l'abolition des contrôles des prix par les manufacturiers ?

Monsieur FOURNIER:

Il y a cette raison, c'est parce que les profits sont moins grands et d'un autre côté, vous le voyez par les statistiques, les chiffres de ventes se sont maintenues, alors on ne voit pas d'autres raisons que le manque de profit à cause des "Loss Leaders". C'est le coupage des prix qui a amené ces faillites-là.

Me GERIN-LAJOIE:





Vous nous avez expliqué que ces statistiques ont été obtenues de Dunn & Bradstreet ?

R Oui, monsieur.

D Je consulte un tableau de statistiques également obtenu de cette compagnie dans lequel il est dit que l'augmentation la plus considérable dans les faillites entre 1949 et 1953, inclusivement, s'est produit dans le domaine des comestibles.

Monsieur FOURNIER:

Dans le domaine des "foods"; vous avez tous les restaurants qui sont compris dans ce domaine-là parce que lorsque nous parlons de cigarettes, nous parlons de restaurateurs aussi.

Me GERIN-LAJOIE:

D Est-ce que vous pouvez nous dire quelle a été le nombre de faillites en chiffres, d'abord, des restaurateurs vendant des cigarettes, je vous demande cela grosso-modo, comme prenez vos clients ?

R Parmi nos clients, cela peut être trop varié parce que parmi les restaurateurs, vous avez des restaurateurs qui donnent des repas et vous avez des restaurateurs qui vendent simplement du chocolat, des bonbons, des journaux, des liqueurs; alors, la proportion peut varier d'un restaurant à l'autre.

D D'où tenez-vous les renseignements que l'item "foods" comprend en partie les restaurants qui ne donnent pas de repas, mais tout simplement qui ont un comptoir de consommation ?

R C'est parce que dans toutes nos associations, Dunn & Bradstreet, Canadian Credit Men Association, les statistiques pour les restaurateurs sont tenues sur les mêmes sources et sous le même vocable de "foods". Pour les restaurants, la source d'informa-



tion se limite là. Vous avez d'autres lignes, telles que "hardware", "roofing" etc. Tous les marchands sont classés dans à peu près cinq (5) groupes et tous les restaurateurs, épiceries, boucheries, ils sont tous classés sous le même nom de "foods".

Me GERIN-LAJOIE:

Si je prends l'item "furniture", household furnishings", je constate qu'en 1952 il y a eu 36 faillites et qu'en 1953, il y en a eu 64, soit une augmentation de pratiquement 30%; dans le "lumber, building materials, hardware", 24 faillites en 1952 et en 1953, 35. Tout cela, pour vous demander si vous pensez réellement qu'on est justifié d'attribuer l'augmentation des faillites à la disparition des contrôles de prix par les manufacturiers, parce que dans ces item-là précisément, ameublement "lumber, building materials and hardware", il n'y en avait pas de contrôle de prix par le manufacturier et puis il y a un nombre de faillites, une accélération dans le nombre des faillites beaucoup plus considérable que dans les lignes mentionnées dans votre mémoire.

Monsieur FOURNIER:

Vous dites qu'il n'y a pas eu de contrôle de prix, par qui ?

Me GERIN-LAJOIE:

Par les manufacturiers, car je crois que les manufacturiers dans les cas d'ameublement, de "lumber et de building material" n'imposaient pas leurs prix aux détaillants ?

Monsieur FOURNIER:

Ils n'imposaient peut-être pas de prix mais est-ce que les manufacturiers n'en ont pas suggéré?



Me GERIN-LAJOIE:

Dans les domaines peut-être qui sont spécialisés, je ne le crois pas, à moins que vous ayez des renseignements contraires dans le cas de "household furnishing, furniture, lumber, building material et hardware". Je crois que les manufacturiers dans ces lignes ne suggéraient pas de prix ?

Monsieur FOURNIER:

Je ne pourrais pas répondre sur cette question-là, parce que je ne suis pas assez connaissant avec le "hardware". Dans la ferronnerie, peut-être que les prix n'étaient pas suggérés, mais je sais que dans la ferronnerie il y avait des articles, certaines autres lignes qui sont comprises dans la ferronnerie, comme par exemple, vous avez les cadeaux. Le commerce du cadeau n'est pas un commerce de la ferronnerie proprement dit, mais vous avez beaucoup de magasins qui vendent des cadeaux et dans ces cadeaux, vous avez des appareils électriques, comme des "Sunbeam", des rasoirs électriques. Ces lignes avaient un prix suggéré. Dans beaucoup de lignes de la ferronnerie, je comprends que les prix n'étaient pas établis par le manufacturier, mais dans les cadeaux, il y en avait une bonne partie qui l'était, dans ce commerce-là.

Me GERIN-LAJOIE:

Dans les cadeaux, vous mentionnez un exemple de prix marqués, mais dans un magasin de "fer", le département des cadeaux, est-ce que ce n'est pas une petite partie du chiffre d'affaires du marchand de "fer" ?



Monsieur FOURNIER:

Aujourd'hui, vous avez un gros pourcentage des affaires dans les magasins de "fer" qui est dans le cadeau.

Me GERIN-LAJOIE:

Vous dites que dans les cadeaux, il y a des produits dont les prix étaient établis par les manufacturiers et vous dites que chez ces marchands il y avait une partie des marchandises dont les prix étaient fixés et vous donnez comme exemple, les "Sunbeam", les produits Westinghouse, mais tout cela c'est une petite partie du magasin de "fer".

Monsieur FOURNIER:

Oui, mais tout de même c'est une partie assez importante et je sais que dans ces deux lignes-là, pour ne mentionner que celles-là, les prix étaient fixés et je peux parler de cela parce que je suis au courant de celles-là. Il y en a peut être d'autres, mais cela, je ne peux pas dire.

Me GERIN-LAJOIE:

Maintenant, quelques petites questions sur votre mémoire. Au début, vous mentionnez que si le consommateur ne vient plus acheter ses cigarettes au restaurant, si le tabacconiste ne reçoit plus chez lui le client pour la vente de cigarettes, il ne recevra plus, non plus, le client pour la vente de ses articles accessoires et par conséquent, ce sera pour lui la fermeture de son magasin ou la faillite. De quels autres produits parlez-vous ?

Monsieur FOURNIER:

R Si nous prenons comme exemple le tabacconiste, celui-là vendrait des cigarettes, des briquets, de la pipe, des accessoires de fumours, des nettoyeurs de pipes, de l'essence





à briquet; il vend toutes sortes d'articles, tels que ceux-là en plus de vendre des cigarettes; cela fait partie de son commerce en général.

Me LAUL GERIN-LAJOIE:

Où le consommateur va-t-il acheter ces produits-là; il doit se les procurer en quelque part, le consommateur ne s'en passera pas ?

Monsieur FOURNIER:

Non, il ne s'en passera pas, mais il ira ailleurs, dans d'autres genres de magasins, s'il ne peut pas en trouver au restaurant. Il pourra peut-être trouver de ces produits chez d'autres marchands détaillants. Mais, d'un autre côté, s'il se présente là, chez le tabacconniste et que celui-ci a fermé ses portes, il devra aller ailleurs. Dans les autres magasins, on ne vend peut-être pas de cigarettes. En plus de cela, le tabacconniste vend beaucoup d'autres produits et j'en ai un qui me vient à la mémoire, des paquets de cartes, et combien d'autres articles. Cependant, il ne faut pas oublier que son commerce principal c'est la cigarette, cela consiste en environ 65% de son commerce. Actuellement, le tabacconniste ne fait pas de bénéfice sur la cigarette et alors il est obligé de prendre son bénéfice sur le reste, sur le 30% et ce chiffre étant tellement bas, il ne peut pas reprendre le profit qu'il perd sur la cigarette et de ce fait, il devra fermer ses portes. Cependant, je tiens à dire qu'il restera toujours les gros distributeurs qui ont des capitaux plus élevés et qui pourront faire face aux magasins à chaînes



dans les cigarettes, mais ils sont clairsemés ceux-là.

Me GERIN-LAJOIE:

Maintenant, dans le petit magasin, il n'y a pas seulement des cigarettes, il y a nombre d'autres produits que vous vendez d'ailleurs, tels que des rasoirs, des lames de rasoirs, des briquets, des plumes-réserve, des crayons. Est-ce que le petit magasin ne peut pas continuer à vivre avec des profits moindres sur les cigarettes ?

Monsieur FOURNIER:

Les librairies, ces magasins-là, ils pourraient continuer parce que la proportion des revenus provenant des ventes de tabac n'est pas de 65%, elle est peut-être 30% sur les cigarettes et 60% sur le reste.

Me GERIN-LAJOIE:

Est-ce que ce n'est pas là généralement qu'on se procure les objets mentionnés ?

Monsieur FOURNIER:

Oui, vous avez quantité de produits qu'on peut acheter chez d'autres sortes de marchands. Vous avez d'autres marchands qui ont différentes lignes. Cependant, si les lignes disparaissent du marché, comme les briquets, ils seraient vendus chez le bijoutier ainsi que les rasoirs électriques et beaucoup d'autres articles; seulement, la pipe, je ne vois pas la pipe qui serait vendue chez Steinberg's à côté du comptoir des viandes.

Me GERIN-LAJOIE:

Est-ce que vous ne pouvez pas l'avoir dans de petits magasins tels que des papeteries et où le marchand tient aussi ces produits-là ?



Monsieur FOURNIER:

Oui, s'il consent à tenir cette ligne-là.

Me GERIN-LAJOIE:

Nous pourrions revenir à cette question-ci, mais je comprends que l'abolition des prix par le manufacturier peut produire à un moment où cela est imposé, disons depuis deux ans ou deux ans et demi un certain désarroi dans l'organisation, dans les magasins qui vendent de ces produits-là, mais est-ce qu'on ne peut pas concevoir que dans l'avenir il sera plus avantageux, pour l'avenir, d'avoir de petits magasins avec plus de variété de produits et qui pourraient vendre aux consommateurs, avec un "overhead" plus considérable, si vous voulez, une plus grande variété d'articles.

Monsieur FOURNIER:

Combien pensez-vous que cela prendrait de temps pour changer le commerce de place ?

Me GERIN-LAJOIE:

Je vous pose la question pour avoir votre opinion.

Monsieur FOURNIER:

Cela peut peut-être changer le commerce, peut-être changer les habitudes du consommateur, l'habituer à aller à d'autres sortes de magasins, mais le temps que cela prendrait pour faire ce chevauchement-là avec le chômage actuel qui s'en vient et qui augmente à tous les jours, est-ce que vous pensez que cela ne va être que le commencement. Je crois que c'est une mauvaise affaire.

Me GERIN-LAJOIE:

Evidemment, dans votre mémoire, vous envisagez la question du



chômage surtout au point de vue économique, au point de vue du patron. Je n'avais pas l'intention de vous demander des précisions sur cette question-là parce que cela nous amènerait bien loin. Mais, j'aimerais vous faire préciser un peu cette question de chômage sur laquelle vous exprimez votre opinion. La Commission pourra la prendre en considération. Même si cela était pour causer du chômage de ce côté-là en prenant pour acquit que ces gens-là ne seraient pas placés dans d'autres industries ou d'autres commerces. Là, ce n'est pas la question qui nous occupe, mais est-ce qu'on ne pourrait pas en arriver à une façon plus économique pour le consommateur d'avoir plus de marchands qui auraient plus de variétés, plus d'articles, mais qui opéreraient leur commerce d'une façon plus pratique. C'est une question, je ne formule pas d'opinion, je vous demande ce que vous en pensez ?

Monsieur FOURNIER:

La compagnie Eddy Match, les marchands d'allumettes a groupé toutes les compagnies d'allumettes en une seule et on lui a demandé par la suite de cesser cela.

Me GERIN-LAJOIE:

C'est un nouveau principe, je vous demande votre opinion.

Me FOURNIER:

S'il arrivait que les gros magasins comme Eaton, Dupuis et Frères, Morgan, Simpson, si tous ces magasins se réunissaient dans un seul centre, là vous auriez les plus gros marchands





qui pourraient contrôler n'importe quelle ligne; ils pourraient vendre meilleur marché que n'importe quel autre marchand et aussi ils pourraient vendre plus cher et s'ils vendaient plus cher, le consommateur paierait plus cher. Avec des gros marchés comme ceux-là, il leur serait facile de contrôler le marché.

Me GERIN-LAJOLIE:

Je vais vous donner un exemple. Au début de l'installation des magasins à chaînes dans l'épicerie, on a cru qu'avec la concurrence que ces magasins feraient au petit épiciers, que ce serait la disparition de tous les épiciers indépendants. Cependant, comme vous le savez, il y a encore cette concurrence, les épiciers se sont groupés en coopératives ou autrement et ils peuvent de ce fait acheter leurs produits à meilleur compte. Est-ce qu'il ne serait pas possible que la même chose se produise dans le domaine des petits détaillants de produits comme ceux que nous envisageons ?

Monsieur FOURNIER:

Si vous prenez les magasins à chaînes comme Dominion Stores, Steinberg's, A. & I., qu'est-ce qui est arrivé avec la compétition qui est survenue là ? Ce sont les marchands détaillants qui se sont réunis en association afin d'avoir un plus fort pouvoir d'achat pour pouvoir concurrencer les magasins à chaînes là. Si tous les petits marchands détaillants se groupaient, se formaient en chaînes de magasins pour avoir un pouvoir d'achat plus étendu, eux pourraient acheter des



paquets de cigarettes et les vendre aux mêmes prix que ces gens-là, mais qu'est-ce qui va arriver ?

Me GERIN-LAJOIE:

Dans votre opinion, qu'est-ce qui arriverait ?

Monsieur FOURNIER:

Si les marchands veulent vendre à prix coupés continuellement, vendre à perte continuellement, ce n'est pas le fait de se réunir ensemble qui va changer la situation. Si vous prenez le commerce dans la cigarette, il est établi que pour le marchand indépendant 65% de son commerce est dans la cigarette. Il se trouve ruiné avec cette concurrence. Si vous prenez le commerce d'un autre et que vous venez jeter sur le marché à prix coûtant le produit que l'autre vend, vous ne faites pas d'argent et vous ruinez l'autre. Si on jetait sur le marché la viande à prix coûtant, ce ne serait pas long que la concurrence changerait et que les marchands se diraient : " On va se réunir ensemble pour cesser ce manège-là ". S'ils ne s'intéressaient pas à la cigarette, ce serait beaucoup mieux, car ils mettent une marchandise sur le marché pour attirer le client, pour attirer des clients afin qu'il achètent d'autres effets. C'est là le but du prix coupé. Si tous les marchands pouvaient faire de même, cela ne serait pas long qu'il y aurait une entente pour élever les prix en général. Dans le cas qui nous concerne, vous avez une marchandise, la cigarette, qui est jetée sur le marché au prix coûtant pour attirer des



clients dans ces magasins-là.

Me PAUL GERIN-LAJOIE:

Evidemment, c'est une question économique et il y aussi la question de liberté pour les gens.

Monsieur FOURNIER:

C'est là qu'on dit que c'est une concurrence déloyale. Vous en avez des exemples à différentes places ici, dans les magasins à Montréal, vous avez à certains endroits un ou deux ou trois (3) marchands, l'un à côté de l'autre et si entre eux il se fait une concurrence désordonnée, ce qui va arriver c'est qu'ils vont se réunir au bout d'un certain temps et remonter les prix.

Me GERIN LAJOIE:

Avez-vous une idée par vos clients de la proportion, du nombre de magasins, il est question de ces petits magasins dans les maisons privées, dans une région comme celle de Montréal, par exemple ?

Monsieur FOURNIER:

On n'a pas ces statistiques-là.

Me GERIN-LAJOIE:

Sur la question du "dumping" dont vous parlez dans votre mémoire, est-ce qu'il n'y a pas de malentendu là-dessus ? Est-ce que ce n'est pas le cas, actuellement, qu'un pays étranger ou n'importe quel manufacturier en dehors du Canada peut exporter ses produits au Canada et là payer la douane et encore il peut vendre sur le commerce au Canada à un prix moins que le manufacturier canadien peut le produire ?



Monsieur TRUDEAU:

En autant que la marchandise soit vendue à son prix réel, au "market value".

Me GERIN-LAJOLIE:

La valeur dans son pays d'origine, cette valeur peut être moindre pour un produit similaire au Canada et si lui, le manufacturier, il peut vendre meilleur marché et produire meilleur marché qu'au Canada, il peut exporter ses marchandises. De toute façon, dans le commerce en général, il peut y avoir la concurrence des produits étrangers.

Monsieur FOURNIER:

Je crois que le produit qui vient de l'extérieur, s'il a payé les douanes et qu'il est entré régulièrement au Canada, il peut dans certaines occasions se vendre meilleur marché que le produit canadien, mais il arrive, sur le marché canadien, des marchandises qui tombent sur la loi du "dumping".

Me GERIN-LAJOLIE:

Est-ce qu'il n'y a pas une confusion sur le mot "dumping".

Le "dumping", c'est la vente sur le marché canadien de produits à un prix moindre qu'ils auraient coûté, ou à un prix moindre qu'ils auraient été vendus dans leur pays d'origine. Vous avez plusieurs exemples de marchandises venant sur le marché canadien à des prix moindres qu'elles peuvent être produites ici, vous avez les jouets qui viennent de l'Allemagne ou du Japon. Si le prix coûtant en Allemagne est de .25 cents pour le jouet qui peut être vendu ici à





Montréal à un prix c'est-à-dire de .35 ou 40 cents, il n'y a rien qui empêche le manufacturier actuellement de mettre son produit sur le marché canadien même si le manufacturier canadien ne peut pas vendre le jouet en bas de .75 cents. C'est la situation actuelle dans bien des produits. Alors, c'est de cette façon qu'il y a de la concurrence, c'est là qu'entre la concurrence pour les mêmes produits fabriqués dans deux différents pays.

Monsieur FOURNIER:

Il y a certaines marchandises qui viennent du dehors du pays et qui viennent ici et qui peuvent tarir le marché canadien et il faut leur imposer des taux de douane beaucoup plus élevés pour protéger notre marché canadien. C'est la chose qui est arrivée dans le caoutchouc, il y a un an ou deux ans, alors qu'il s'importait de la claqué du Japon et là on a élevé le taux de douane afin que cette marchandise puisse entrer à un prix équivalent ou à peu près au prix du manufacturier canadien.

Me FAVREAU, c.r.

Le Gouvernement fait cela pour que la concurrence sur le marché canadien soit maintenue. C'est tellement vrai, qu'il existe une loi de coalition et le Gouvernement impose une hausse très élevée des douanes lorsqu'il y a des abus qui menacent la cessation de la concurrence sur le marché canadien. Là, il y a des recommandations qui ont été faites et des modifications de tarif. Cela crée un problème énorme parce que la protection du marché canadien a été pris en considération et c'est de là qu'est venue la loi "anti-dumping"



Monsieur FOURNIER:

Si on traite de cette question simplement au point de vue du consommateur, pourquoi le marché canadien ne laisse-t-il pas entrer certaines marchandises à ces prix-là pour en faire bénéficier le consommateur ? Pourquoi laisse-t-il pas entrer la marchandise à des prix si bas et alors le consommateur pourrait acheter et profiter de ces prix-là . Mon opinion est que cela est désavantageux pour tous ceux qui sont concernés, autant pour le manufacturier que pour le consommateur et c'est également désavantageux pour l'économie du pays. Cependant, dans ce cas-là, c'est le consommateur qui en bénéficierait. Si le consommateur peut avoir un certain produit à un prix , mettons de .25 cents, pourquoi ne pas le laisser entrer ? Au coût de la vie aujourd'hui, il serait très heureux de payer moins cher, cependant, on va lui mettre des prix, des douanes plus élevées et au lieu de payer .25 cents pour un article, il va payer .40 cents ou .50 cents et là encore, c'est le consommateur qui va payer ce prix-là.

Me GERIN-LAJOIE:

Je comprends votre point de vue, la question est délicate, mais c'est parce que le Gouvernement Canadien veut protéger le manufacturier et également protéger le détaillant. Je comprends que de la façon que vous suggérez, il est imposé des douanes à certains produits plutôt que de laisser le libre cours de la concurrence, mais vous comprenez que c'est pour la protection du manufacturier canadien. Cependant, il y aurait peut-être lieu d'une réorganisation de notre économie politique, selon votre opinion.



Monsieur FOURNIER:

Un remaniement économique qu'entraîne une réorganisation qui par contre, entraîne une grosse perte financière au commerce.

Me GERIN-LAJOIE:

À la page 4, est-ce que vous proposez .... vous avez à la page 4, le commencement est au bas de la page 3, vous dites : "Le Gouvernement ne pourrait-il pas faire lui-même sa part dans cette entreprise en donnant une décision qui donnerait aux marchands détaillants un bénéfice raisonnable dans la vente de leurs produits et qui, même s'il le faut, déterminerait le prix de la revente des marchandises à un prix fixe, tout en permettant aux manufacturiers de canceler les commandes faites par des maisons qui voudraient couper les prix de vente en bas du prix suggéré". Avez-vous quelque chose à ajouter sur ce point ?

Monsieur FOURNIER:

C'est-à-dire, en permettant aux manufacturiers de suggérer le prix de revente.

Me GERIN-LAJOIE:

Vous ne proposez pas des prix **fixés** par le Gouvernement ?

Monsieur FOURNIER:

Non, qui permettraient aux manufacturiers de suggérer un prix de revente et de permettre aux manufacturiers, si le détaillant ne suit pas les suggestions, que le manufacturier puisse lui retirer ses produits.

Me FAVREAU, c.r.

Ces articles qui sont des articles accessoires au commerce



normal du tabac, en vendez-vous également à d'autres magasins, à d'autres détaillants ?

R Oui, certainement.

Monsieur TRUDEAU:

Il y a des articles qui sont très bien spécifiés, catalogués pour aller chez le tabacconniste et nous avons aussi des items qui sont vendus chez les bijoutiers.

Me FAVREAU, c.r.

Et les petits restaurateurs, les petits épiciers ?

Monsieur FOURNIER:

Oui, il y a certains produits que nous vendons chez les épiciers, ce que nous appelons des "sundries", des pierres à briquet, de l'essence à briquet, mais l'épicier n'a pas la gamme complète que le tabacconniste peut avoir.

Me GERIN-LAJOIE:

Est-ce que vous croyez qu'une législation qui permettrait à un manufacturier, par exemple, ou un gouvernement quelconque qu'il puisse dire à un grossiste de référer à la Commission ou une Commission Gouvernementale le cas de coupe excessive dans le prix dans certains produits qui sont vendus dans le commerce en général; est-ce que vous croyez qu'une législation qui permettrait de référer un tel cas à la Commission et qui permettrait à la Commission de décider s'il y aurait lieu de permettre de vendre à un tel prix ou non, quelque soit le produit que cela peut être; est-ce qu'il est dans votre opinion qu'une telle Commission devrait être créée pour légiférer d'une façon quelconque et appliquer des sanctions aux





manufacturiers ou détaillants même qui vendraient à un prix indu, qui couperaient à un prix indu ? Le manufacturier dont le produit serait vendu à un tel prix pourrait référer à la Commission Gouvernementale le cas et demander des sanctions contre le détaillant délinquant; est-ce que dans le cas il ne serait pas suffisant d'avoir une telle Commission qui verrait au maintien des prix, à un prix adéquat pour le consommateur ?

Monsieur TRUDEAU:

Oui, dans notre commerce nous vendons surtout des "branded lines" fabriquées par des compagnies qui sont dans le commerce depuis environ 60 ans et même plus. De fait, nous sommes nous-mêmes dans le commerce depuis environ 60 ans.

We cover Canada from Coast to Coast ....

(The evidence that follows is reported in English by Mr. Robert Young, shorthand reporter).

Maurice Guay,  
Sténographe officiel.  
Montréal.



MR. PAUL TRUDEAU: In our organization we sell most of the branded lines, and we have been in the market for over 65 years. We have covered Canada from coast to coast, and we see actually there is a little uncertainty in the retail trade, and some retailers to boost their sales, and we will take for example one of the most respected lines -- Sunbeam -- we have seen Sunbeam kick out the football since last Christmas and they have been kicking names like Ronson, Parker Pen and Waterman -- all those being kicked around so actually the retailer does not know what price to quote because Joe Brown will ask \$29.50, Jim Smith \$27.50. He is not making enough profit and I think there is a little uncertainty in the trade, actually.

---The hearing concluded at 6.15 p.m.

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RESTRICTIVE TRADE PRACTICES COMMISSION

LOSS-LEADER SELLING

TRANSCRIPT OF EVIDENCE

Vol. 12

SASKATOON

JUN 29 1954



PAGE A

ERRATUM

MR. WADDELL, who is indicated  
in the transcript as having  
appeared before the Commission  
on June 2, actually appeared  
on June 4.

--O--





C O N T E N T S

Saskatoon Sitting

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(No Exhibits filed at  
Saskatoon)



RESTRICTIVE TRADE PRACTICES COMMISSION

IN THE MATTER OF

an inquiry

Regarding Loss-Leader Selling

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Hearing held (in public) in the Court  
House, Saskatoon, Saskatchewan, June 29, 1954.

PRESENT:

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.	Chairman
Guy Favreau, Q.C., B.A., LL.B.,	Member

APPEARANCES:

Mr. Paul Gerin-Lajoie	Counsel for the Commission
Mr. R. M. Davidson	Secretary to the Commission

REPRESENTATIONS:

The Retail Merchants Association of  
Canada (Saskatchewan) Inc.

The National Foods Division, the Retail  
Merchants Association of Canada, Inc.

- and endorsed by -

The Dominion Board of the Retail Merchants  
Association of Canada, Inc.

Mr. A. A. Shelly  
Mr. M. D. Grant  
Mr. A. M. Rands  
Mr. R. E. Walker



36) THE CHAIRMAN: I think perhaps before we have any presentations this morning I might just say a word or two about the proceedings that have gone on before this meeting.

The origin of the inquiry into loss leaders by the Restrictive Trade Practices Commission goes back to the report to parliament of the MacQuarrie committee, which was set up in 1950 and which reported at the end of 1951 on the subject of resale price maintenance. It recommended that resale price maintenance be abolished or prohibited. Legislation was passed making that effective.

The MacQuarrie committee, in making that recommendation, also recommended that a study be undertaken of the effects of loss leadering, the whole subject matter of loss leaders -- what they consisted of, in what fields they were used, and what the effects were.

The MacQuarrie committee was of the opinion at that time that loss leaders were not very prevalent because we were living under very prosperous conditions under which merchants generally were able to sell almost everything they put into stock. Therefore there was less temptation to indulge in loss leadering or anything of that kind for the purpose of getting business.

Then, in the next year the full report of the MacQuarrie committee was received and the Restrictive Trade Practices Commission was established. Immediately after that -- and I think I should



emphasize this -- immediately after the appointment of the Commission an inquiry was begun into the subject of loss leaders by the Director of Investigation and Research under the Combines Investigation Act. That was a fairly lengthy inquiry, and was the beginning of the present inquiry.

At the end of last year, or the beginning of this year, the Director of Investigation and Research had secured all the information he felt he was able to secure. He compiled that material in a book which you see on the desk in front of you -- the green book. This has been distributed to all the organizations or individuals which had expressed any keen interest in the subject matter of the inquiry.

That statement of information and facts which the Director had obtained was submitted to the Commission; and then it became the Commission's duty to proceed further with the inquiry, with a view to getting all the information we could through the medium of public hearings and the presentation of briefs or any material which people were able to present to us.

As a result of that we have been holding hearings in various cities of eastern Canada, and we are now about to proceed through western Canada. This is the first of the hearings in western Canada. We have notice here of one brief which is to be presented on behalf of the Retail Merchants Association, Saskatchewan branch. And





if there are any others in the room or any who may come here while we are sitting and who would wish to present briefs, we will not refuse to hear them even at this last minute.

I thought that this introduction might be helpful to explain the time which has elapsed since the legislation was passed at the end of 1951 and concerning which some comments occasionally are made. But the inquiry was really launched as quickly as the MacQuarrie committee had in mind. It was launched immediately after the setting up of the Restrictive Trade Practices Commission, and we have been proceeding with it for the last three or four months -- indeed, since the statement of facts and information was submitted to us by the Director.

This morning we are about to hear a brief and the discussion of a brief. It is to be presented on behalf of the Saskatchewan Retail Merchants Association. I understand Mr. Shelly is here for that purpose. Do you have copies of your brief?

MR. SHELLEY: Yes, I have some copies.

THE CHAIRMAN: I think for the purpose of handling the brief it might be as well to read it and to make any comments you may desire to make on any points as you proceed with the reading of it. Then, you might add any further comments you wish after you have finished reading it. If that is convenient to you it would be satisfactory to us, and I think it would be likely to give a more



complete picture than if you were to begin discussing it without first having read it.

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MR. SHELLY: Mr. Chairman and Commissioner Favreau, first of all I should like to say how pleased we are to have the opportunity of presenting this brief to you today.

First of all, I should like to make one modification. There is no change in the body of the brief. The brief is as it was originally prepared, and you have had copies of it for some time. But a few days ago at Edmonton the annual meeting of the National Foods Division of the Retail Merchants Association was held, as well as the annual meeting of the Dominion Board of the Retail Merchants Association of Canada; and on that occasion this Saskatchewan brief was studied. And so, with your permission now I am presenting this brief as a joint brief on behalf of the Saskatchewan Retail Merchants Association, as was originally intended, and also on behalf of the National Foods Division of the Retail Merchants Association of Canada.

I should say, too, that each of these bodies ---

MR. FAVREAU: The National Foods Division, I understand, is one of the trade sections of the Retail Merchants Association?

MR. SHELLY: One of the national trade sections of the Retail Merchants Association, but it has autonomy in its own right, just as the



Saskatchewan division has autonomy in its own right.

MR. FAVREAU: Yes; go on.

MR. SHELLY: And on that, even though both these organizations are autonomous, the Dominion Board of the Retail Merchants Association of Canada is very pleased to endorse this brief on behalf of these two divisions.

Then, I wish to introduce these gentlemen here, if I may. I would point out that Mr. Rands is here as the national secretary of the National Foods Division, and also the national secretary of the Dominion Board. Then we also have Mr. Grant from Winnipeg, who is the newly elected dominion president of the National Foods Division. We have also Mr. R. E. Walker, secretary of the Saskatchewan Retail Merchants Association. Then, somewhere in the mud between Prince Albert and this city there is George Whitter, president of the Foods Division of the Saskatchewan Association. He is coming down and he should be here as soon as he can get here; but he is travelling in the mud, I understand.

Now, I have handed you copies which have been signed by the respective officers of these different associations. Of course these people are here to support the brief.

Before going into the details of the brief itself I should like to convey a message to you, if I may. While I was in Edmonton a few days ago Mr. H. A. Fairbairn, President of the Alberta



Retail Merchants Association asked me to convey a message to you. He indicated that, although your Commission is sitting in Edmonton tomorrow, I believe it is, and while they do appreciate the opportunity thus provided them for appearing before the Commission, still, in view of the fact that this brief is being presented here today they have felt that it meets their needs and they will not be taking advantage of the opportunity to appear tomorrow.

THE CHAIRMAN: They feel they have nothing further to add?

MR. SHELLEY: No, nothing further to add. I should say at this time that at some later date there will be a consolidated brief presented to your Commission by the national body. So that this does provide a further opportunity for Alberta or any other section to submit any additional material they may wish to submit.

THE CHAIRMAN: That will be at Ottawa, in the final hearing.

MR. SHELLEY: Yes. With that brief comment by way of a preliminary, I should like now to proceed with the reading of this brief. I shall have some comments to make as I go along. Of course you will no doubt be asking me questions as I go along, too. If you have any occasion to do so, you might ask those questions.

THE CHAIRMAN: We will try to reserve our questions until after you have completed your brief.





MR. SHELLY: The first paragraph is as follows:

Thanks to Director of Investigation and Research

At the outset, we wish to record our appreciation for the material collected by the Director of Investigation and Research for the purpose of laying it before the Restrictive Trade Practices Commission, in connection with the inquiry into loss leader selling. This material became available to us in book form and we shall in this brief refer to it from time to time as the Director's Research Report.

THE CHAIRMAN: On a number of occasions this document has been referred to as the "Director's Report." It is not strictly speaking a report.

MR. SHELLY: I understand that.

THE CHAIRMAN: It contains no conclusions and no recommendations. It is merely a statement of fact and information he has obtained. So long as that is understood, and so long as there will be no misapprehension, you may proceed.

MR. SHELLY: All right. I continue:

We have found this material very helpful in consolidating our thinking to the end that we might come up with a practical remedial recommendation.

Loss Leader Prevalence Varies According to State of Economy.

It would appear superfluous on our part to add any additional material concerning the prevalence in Canada of loss leader selling in the accepted



sense. It is clear from the Director's Research Report that the extent of loss leader selling is related to the state of the general economy, there being less of it under favourable economic conditions and progressively more of it when production and employment are declining.

Prevalence of Loss Leader Selling Most Common in Food Field

Again, the Director's Research Report reveals that loss leader selling, in the accepted sense, is more common to the food field than to other classifications of retailing. The report further confirms that the loss leader device has been used by all categories of food retailers but that in some cases, it was apparently used only as a seemingly necessary defensive measure.

This Brief Speaks for Food Field Only

At this point we wish to state that this brief concerns itself with the food field only, in the accepted sense ---

That is, in the accepted sense as we think of the food field. Then the brief continues:

--- and that any remedial recommendations contained herein are intended for that field. Quite possibly, other classes of retailing might wish to recommend adaptation of our proposed formula to their trade following due study. That is something for the respective other classifications to consider.



This same Mr. Fairbairn, President of the Alberta Merchants Association, who is a hardware man, is much taken with this formula. He is very actively considering its adaptation to that field. No doubt we will hear more about it at some later time. Then I continue with the brief.

Deceptive Loss Leader Selling is Anti-Social

The Director's Research Report makes it abundantly clear that under certain conditions, selling by a retailer at cost or even below cost is not in the category of loss leader selling in the accepted sense. On the other hand, loss leader selling in the accepted sense is admitted to be deceptive both in concept and effect. We suggest that this latter category can properly be classed as an anti-social device.

Repulsive to Fair Minded Retailers

The use of a deceptive device is repulsive to fair minded retailers. However, if employed by their competitors even fair minded retailers, in the interest of survival, reluctantly resort to this device knowing all the while that it has a degrading effect on the industry as a whole and loses for it the respect of intelligent consumers. On page 56 of the Director's Research Report one co-operative operator is quoted as saying: "Purchasers are a very gullible lot and a large percentage are badly deceived into thinking that the loss leaders represent the general price level in that store."



I know that there were contrary opinions expressed also in this report. Then, the brief continues:

Anti Loss Leader Legislation Very Common

The Director's Research Report shows that as early as 1902 the State of South Carolina introduced anti loss leader legislation. But it is since 1935 that modern anti loss leader legislation has become extended so as to embrace some thirty states of the U.S.A. In recent years some Canadian provinces too have passed similar legislation. Generally, this legislation has imposed a legal floor price ranging all the way from 5 per cent to 12 per cent over cost, with provision for exceptions to permit of clearance of perishables, damaged goods, etc.

A Simpler Law Seems Very Desirable

The Director's Research Report indicates for example that in the case of one state "much of the Act's effect" appeared to have been achieved without prosecution being necessary. In some other states sharp operators soon found loopholes, through use of coupons, premiums, etc., to undermine the intent of the law. All in all, however, it would appear that these statutes, although often difficult to enforce, have more than justified their existence. Nevertheless, we are very conscious of the desirability of providing a simpler method for purpose of a federal law and it is the purpose of this brief to recommend a





simple specific formula for the consideration of the Commission.

Concerned With Consumers and Fair Minded  
Efficient Retailers Only

We are too realistic to hope that a solution can be evolved which will satisfy everyone. Having regard to the ease of entry into the food field, it is a normal condition for this industry to be blessed with numerous operators who know nothing whatsoever about the conduct of the business or of the responsibility of this industry to the consumer, to labour, to processors and to primary producers. We are not pleading the cause of these floaters, nor are we proud of them as inadvertent members of our industry. We are concerned with reasonable equality of opportunity on a merit basis for fair-minded efficient operators, be they large or small, and we believe that consumers too are sympathetic to this category to the end that the consumer might enjoy best possible honest values and satisfying service.

The Objective ... Free and Honest Competition ...  
No Price Maintenance ... No Floor Prices

We do not believe that in the food field so-called price maintenance is either desirable or necessary.

We do not believe that in the food field it is either desirable or necessary to provide legal floor prices by compelling pricing at not less than so much over cost.

We believe that an adequate normal play of



honest price competition should be safeguarded.

Curtailment of Deceptive Pricing

We are concerned with the curtailment of a device that is deceptive in its concept and effect and we respectfully recommend a simple formula which, if given legal status, would produce the desired result on a self-policing basis.

This formula ---

The point of self-policing is very important, I suggest. Then the brief continues:

This formula, in principle, consists of making it obligatory for any retail unit to supply on request any food store unit at the same price at which any given item was available to the consumer, less an appropriate specified wholesale discount. This general rule of course would be subject to stated qualifications to permit of legitimate clearances, etc.

To elaborate, the reason I do not say simply "retailer" is that some organizations of course operate a number of units so the thinking here is that whatever rule would apply, would apply to every unit even though it is a multiple unit organization.

To continue with the brief:

Formula Merits Support of Consumers and Fair Minded Retailers

Since this formula promises effectively to curtail deceptive pricing as well as other deceptive practices which are by-products of deceptive pricing, it merits the support of



consumers.

And we are sincere about that. And I think I can say, basing this remark upon press reports we have seen concerning the brief submitted to your Commission by the Canadian Association of Consumers -- we can say that we are fully in accord with the brief presented by the Canadian Association of Consumers. We are opposed to the same things to which that brief expressed opposition. As I understand it, that brief left the door open for the kind of strengthening of legislation which would do away with deceptive devices. And we feel that in this proposal we are making here today we have that kind of formula.

I should like to say at this point, too, that we have had no hesitation in going to the consumer with this formula. We thought that would be a good thing, before the Commission got here at all -- and this was done without any publicity whatsoever, so far as the formula was concerned. I had an opportunity quite recently to meet with a committee of the executive of the Saskatchewan division of the Canadian Association of Consumers and we spent some hours going over this brief, clause by clause. While the provincial body of course necessarily does not express itself in any way on matters of policy -- that is left for the national level -- yet I felt that it was very useful to go over this material so that there would be an understanding of what is involved. And I am sure I can say that the ladies



who met with me supported what is contained in this brief.

And, by the way, I can say that they had with them as a consultant an economist from the University of Saskatchewan. I am referring to Dr. Mabel Timlin. I am sure that all these ladies fully understand the meaning and the implications of every clause contained in this brief. And, subsequent to the meeting of that committee, Dr. Timlin examined and read the report on the brief, and submitted it to the Saskatchewan president, Miss Atkinson. I believe she is here today. At least I know she intended to be here -- yes, I see that she is here as an observer.

And so, the whole thing was gone over again by the full meeting and the executive of the Saskatchewan division of the C.A.C., where a decision was taken to submit Dr. Timlin's report and a copy of the brief to the national level, with a covering letter by the Saskatchewan president who, I am happy to say, has a great deal of retail background in her own right. This is also very helpful.

I am just saying that in passing to indicate that we have no hesitation at all in going with this formula to the consumer, feeling that it provides an opportunity to meet the problem which does exist in such a way that the consumer can give it its blessing.

There has not been adequate time to hear from the national headquarters of the C.A.C.





However, when Mr. Rands goes back in a day or two he will be able to get in touch with the national president and pursue the matter further. But we are very hopeful that we have found a common meeting ground.

Then, to continue with the brief:

Fair minded retailers will welcome the formula because it retains freedom of competition while at the same time providing them with a source of supply at a cost which at least protects a portion of their cost of doing business when meeting uneconomic competitive prices.

Private Brands no Exception

If any retailer bemoans the fact that this formula provides competitors with the right to retail his own private brands at his identical retail price, incidentally yielding them perhaps half the customary gross margin, it might be opportune to remind him that the operators who promote private brands have been noted for their insistence that it is their right and privilege to do anything they like to the retail price of a nationally advertised product. This formula falls far short of providing a similar opportunity to competitors of a retailer who promotes private brands in so far as the sale by them of his private brands is concerned.

That is, the effect of this formula is this, that it does give his competitor an opportunity of meeting his private brand prices with the same items at a very



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nominal margin. But, by the way the formula works, it does not provide them with an opportunity of underselling him. Because immediately he does that it puts him in a position where this first retailer, who promotes the private brands can step in and re-buy that merchandise so that the other man would not have any to sell. That is the way it works out. Then, to continue with the brief:

The Discount Rate

Traditionally certain staple food store items are priced to yield a relatively low gross margin. It is recommended that for purpose of this formula the discount rate on these items be set at 5 per cent. All other food store items traditionally are priced to yield a higher gross margin. It is recommended that for purpose of this formula the discount rate on these items be set at 10 per cent. It may be noted here that in the U.S.A. margin percentages provided for purpose of anti-loss leader laws range from 5 per cent to 12 per cent.

Wide Scope for Normal Play of Honest Price Competition

In the aggregate this proposed discount would be the equivalent of perhaps one-half of the gross margin percentage obtained by the typical independent food retailer in the normal conduct of his business and less than one-half of the gross margin percentage obtained by the typical chain operator who is on the direct buying list. The chain operator of course performs



his own wholesale function.

Therefore his combined gross is greater than the single gross of the independent retailer. The brief continues:

It will be seen, therefore, that a retailer has pricing freedom, without making the proposed formula operative, to the extent of forfeiting approximately one-half of his total normal gross margin, a level which would not allow him to break even on his operation.

I am sure if you take all the figures before you in regard to the typical gross margin on this line of business, ranging perhaps around 14 per cent or so for the independents, and higher than that for the chains, when they take into account the combination of functions they perform -- wholesaling and retail distribution -- it will be seen that we have a formula here which would allow scope for what I call honest price competition -- approximately half of that total gross margin, and even more than that in the case of chains -- this is a very wide spread, having regard to the fact that according to the figures of the Dominion Bureau of Statistics the net profit of the industry in Canada, year in and year out, runs not very far from right around 2 per cent.

So that you can see that this allows scope for the retailer if he honestly wishes to give good values, superior values to anybody else, to the consumer. He can lose three or four times his normal profit before even making this formula operative.



Then, to continue with the brief:

This is an effective answer to anyone who suggests that the proposed formula would result in a higher price level. So, while there is plenty of scope for honest price competition the minute a retailer engages in deceptive pricing he thereby opens the door to his competitors for supply on a basis which enables them to be competitive with him while still recapturing at least a portion of their overhead cost.

I use the words "deceptive pricing" there in the sense that loss leader selling in the accepted sense is recognized as a deceptive device.

And now we come to the formula itself. In the brief we say this:

The Formula

We shall now proceed with a description of the proposed formula and its necessary mechanics.

And, before going into this I should like to say, with all due respect to the legal profession, that so far we have not seen fit, or have not seen any occasion to confer with any members of the legal profession on this brief. It is here in laymen's language. I know that when the time comes, as we hope it will, that this can become translated into law that then it could be clothed properly in precise legal terminology.

THE CHAIRMAN: I think there is no doubt that you can explain to us quite clearly what the





intent is.

MR. SHELLY: Yes, that is right.

THE CHAIRMAN: And the subsidiary ideas that go with it. It is just a matter of drafting.

MR. FAVREAU: Besides that, many laws should be translated into laymen's language.

MR. SHELLY: Quite so. I had considerable experience during the war in this connection. And, by the way, may I say I am sorry Mr. Whiteley is not here, because I used to work with him in Ottawa in connection with the Wartime Prices and Trade Board. I had a lot to do at that time with the drafting of regulations and so on, and worked in conjunction with lawyers in drafting laws.

The brief continues in this way:

1. Obligated to Sell

Except as otherwise provided, any retail unit, upon request, shall sell to any retail unit in the food field, any item commonly sold in food stores, at the lowest net price at which such retail unit had it available to the consuming public on the immediately preceding business day, less the applicable wholesale discount set out in clause 2 hereof.

May I point out at this point that there is good reason here for the use of the words "the immediately preceding business day". It would not work without having that provision in there, because we find from time to time different organizations using this loss leader device in a manner which could



not be pinpointed very well. It may be done without any advertising. It may be without any indication or any advance indication of any sort. The only indication of it may be an announcement over a loudspeaker in a store to the effect that in the next fifteen minutes or the next five minutes, as the case may be -- whatever time is mentioned -- a certain brand of coffee or of some other commodity, will be sold at 20 cents a pound off, and that sort of thing.

So you can see that unless we extended the privilege to retailers in making that purchase, unless we extended that privilege to the next day, he would have no opportunity of exercising it because he would have no knowledge of it until the next day, generally speaking.

THE CHAIRMAN: On the other hand, it must be exercised very quickly or it will not be useful.

MR. SHELLEY: We will come to that later. We have a quantity stipulated. Unless it happens to be in the category of a clearing item -- and you would be quite right. Nobody is concerned, of course, about a clearing item. But, at the same time, we have to mention that. We have to have provision for it. However, the honest clearing item is not the problem being considered here at all. Nobody will say that.

THE CHAIRMAN: That is, the effect of the statement you make is that they do not object to clearing items at the end of the season, or distress



selling, where it is necessary to get rid of stock?

MR. SHELLEY: That is right, yes. But one has to have a special provision for that; otherwise, by not having it it would cause trouble. Now I continue with the brief:

Note: Often loss leaders are available for unstated minutes only and without prior indication concerning time of day. Therefore, the stipulation that a retailer's right to buy (unless otherwise provided) applies on the succeeding business day.

That refers to clearing items, of course. Then, we continue:

## 2. Wholesale Discount

The wholesale discount referred to throughout different clauses of this formula shall be 5 per cent on items listed in the schedule below and 10 per cent on all other items.

Note: Exempted from this provision are any items such as fluid milk, etc., where the price is governed by duly constituted government approved boards.

In some provinces, in the case of milk, the price is controlled by the government board. In some provinces milk is in the same position as soap, or any other item, speaking from a competitive standpoint. Then we continue in the brief to set out the 5 per cent schedule. It is as follows:



The 5 Per Cent Schedule

Fluid milk and canned evaporated milk  
Eggs  
Butter  
Margarine  
Lard  
Shortening  
Tea  
Coffee  
Tobacco  
Cigarettes  
Granulated sugar in units of 5 pounds and larger  
All-purpose flour in units of 10 pounds and larger  
Salt in units of 50 pounds and larger  
Stock feeds in units of 25 pounds and larger.

I might say that that list of items represents a very large proportion of the total food store sales. They are the staples. And so there the 5 per cent would apply. That is the recommendation we make. Any other items would be 10 per cent.

Now we come to the third clause, where we deal with the question of quantity. We say in the brief:

3. Quantity

Except as otherwise provided, the maximum quantity that the selling retail unit shall be obliged to sell to any one purchasing retail unit of any one given item shall be to a value of \$300 after deducting the applicable wholesale discount.

The exception referred to at the first of this paragraph refers to clearing items, and short supply items. For this formula to have the effect that it is designed to have, this amount we believe is just about right. Because if it were a mere \$5, or something like that, it would lose its effect. One could perhaps say that it should be \$300 on this group of





items and \$100 on that group of items, and so on. But I do not think it is of any significance. We are dealing with a deceptive device. We might as well make it simple and make it \$300 right across the board. Further on I will say it will take care of itself, because there are many items where the retailer would not want to have \$300 worth. He might wish to have only \$5 worth; and if that is so, that is all he will buy.

On the other hand, it illustrates a staple item. When we are speaking of illustrating a problem it is nearly always concerned with staple items, items concerning which the public knows the value, or the normal value.

Then we turn to the part of the brief dealing with pricing error. It says:

4. Pricing Error

If the price at which an item was advertised or otherwise available to the consuming public resulted from a legitimate pricing error, the retail unit concerned shall not be obliged to sell at such erroneous price.

We see errors made occasionally. It may happen in a newspaper advertisement, and it may happen over the radio, and it could happen simply in store pricing. An item is marked at \$1.39. It may be a box of fruit marked at \$1.39 instead of \$2.39. Those things happen, of course. The trade may sell one box, just to be able to say that they complied with the advertisement, but it would be an honest error -- and that is that.



We should exclude any obligation in a case like that, exempting the retailer from having to sell to other retailers on the basis of that price.

THE CHAIRMAN: I recall some years ago where the T. Eaton Company advertised fur coats valued at \$150. When the advertisement appeared in the newspaper they were advertised at \$1.50. However the T. Eaton Company sold ten of them at that low price.

MR. SHELLY: Yes. There is no intention to produce any unjust hardship; so, necessarily, we should exempt that sort of thing.

Then, to continue with the brief:

5. Bona Fide Clearance Items

If the selling retail unit has the item conspicuously marked as a clearing item it shall not be obliged to sell to any one buying retail unit a quantity greater than 25 per cent of the total quantity on hand at the time of receiving the purchase order from that buying retail unit.

Here you will see that we waive the next-day provision, and also waive the \$300 provision. And so it is entirely up to the competing merchants to find out about it in any way that they have of finding out that there is a clearing item. This would give them the right to come and buy 25 per cent of the quantity on hand, on the basis of the clearing price, less that same stipulated discount of either 5 per cent or 10 per cent, depending of course upon the category of the items involved.



And, if it is an honest clearing item, certainly the selling retailer has no objection to getting rid of it. He is concerned with getting rid of it, as a matter of fact; he wishes to do just that and if he can sell 25 per cent of what he has to one man, that is all to the good, so far as he is concerned. But it does relieve him from the obligation of having to supply \$300 worth.

Then, in our brief we come to clause 6, which deals with short supply items, and says this:

6. Short Supply Items

If the item is not a clearing item, but adequate supply replenishment for the time being is not available from the normal supply source, then and in that event a retail unit shall not be obliged to sell such item to any other retail unit unless its lowest net price available to the consumer on the preceding business day yielded a gross margin percentage of less than the discount percentage indicated for that item in Clause 2 of this formula, based on the lower of cost or replacement cost.

So we necessarily have to provide some protection to the merchant in order that he may not become deprived of the allocation of a short supply item that may be available to him. Even in these days of a general long supply position, with a surplus of almost everything -- yet, even so, we do run into the occasional item that is in short supply, or in connection with which there is a semi-short supply.



Or it may be in short supply with one retailer and not in short supply with another. That also happens. Perhaps in this connection I might continue by reading the note which appears in the brief. It is as follows:

Note: An item like Australian raisins usually is available once annually only. A retailer who purchases his requirements for the year in order to have a supply throughout the year for his customers will not be obliged to let his supply go to other retailers if he follows reasonable pricing practice.

Raisins is a big item. In my firm we usually invest about \$30,000 in Australian raisins. We buy them when the new crop comes on the market and we protect our customers in that way. We buy enough of them to do us through the year.

On the other hand many operators do not do that because they will not invest that much money in that article. So they may have enough to see them through three months, or so; and then, after that, they have no more Australian raisins and they sell California raisins. Through the years, speaking generally, they have been higher in price. So therefore, that person, competitively, is at a disadvantage with the person who still has Australian raisins.

You may say, "Is that item in short supply?" I would say that it is in short supply because if it was not then this retailer who wishes





to buy raisins from me as a retailer would be able to get them from his normal wholesale supply source. But his wholesale supply source did not see fit to make that investment.

And there is another factor that arises sometimes and as a result of that situation. There may be an importer, a sort of speculator, and he buys at the right time. He will buy raisins; and then, later on, some other wholesalers who did not protect themselves buy them from him as a sort of second-hand purchase. And there is another middleman in there and he has had a profit out of it too.

However, we are not too much concerned with that situation. I will mention two or three other examples of how and why this clause is necessary. It is only recently that we have heard about the trouble in Guatemala. That is where the bananas for this part of the country come from. We have been feeling this condition for the last six or eight months -- an intermittent shortage of bananas, because of the trouble they were having down there.

That is why we need this protection. I, as a retailer, have my allocation of bananas; and I do not want to be in the position where the other fellow can come across the street and buy mine. And if he has that right, then I have the right to go and buy them back from him.

Then, there is one other thing -- and this has happened fairly frequently, particularly with



the soap companies. They will come along and they will -- well, you know they are great people for promotions of all sorts. They will come along and they will have a new promotion scheme. Let us say it is a scheme where they offer two packages of this detergent and they call it a half-price sale. They are banded -- two packages are banded together. The printing is right on there identifying it as a special kind of deal. So the customer buys the first package at the regular price and he gets the second package at half price.

Now, the soap company's representative comes around and calls on every retailer and says, "Your allocation will be two cases", and he will go to the next man and he will say, "Your allocation is ten cases" -- and that would be a larger store. To another man he would say, "Your allocation is one case" -- a very small store. And so on, all through the piece.

So, unless we did have this provision here it would open the door to other retailers. It is wonderful consumer value; and your lot of two cases or ten cases, as the case may be, may fall far short of meeting consumer demand at that price. And, so, to all intents and purposes, it is a short supply item.

By this exception that we provide here, we protect every retailer so that he will not be deprived of his allocation, the allocation he may have had, of that merchandise. That is all taken



care of by this particular provision.

THE CHAIRMAN: Does that apply to premiums too?

MR. SHELLY: It could, yes. It could just as well be a soap premium deal instead of being a half-price deal. Yes, that is true. It could apply to a premium deal.

Then, we come to the next subject. But perhaps before doing so I should read the remainder of this note, where I say:

The same, for example, applies to bananas which often are recurringly in short supply. Then too, it applies to deals and introductory promotions etc., from time to time sponsored by manufacturers on an allocation basis.

I now come to the part of the brief dealing with market advance. It says:

#### 7. Market Advance

In the event that a market price advance on an item results in a higher replacement cost for a retail unit on its next purchase from its normal supply source, then and in that event, a retail unit shall not be obliged to sell such item to any other retail unit unless its lowest net price available to the consumer on the preceding business day yielded a gross margin percentage of less than the discount percentage indicated for that item in Clause 2 of this formula, based on the cost prior to the current market advance.



I might explain that if we did not have that provision in there there would be an incentive for a retailer to increase his price. He may have anticipated a market advance on something, and he has bought in anticipation of that advance. If we did not have this provision in there he would feel compelled to raise his retail price in order that it would not be attractive for other retailers to come and buy from him. It just exempts him from the obligation to sell to other retailers.

I could give an example of this. You are all familiar with the government-subsidized canned pork. There was a tremendous supply of that. Not so long ago the government decided that after a certain date no more would be available to the domestic trade. After that date, whatever was on hand would be sold for export. Then the trade was advised to that effect.

Every retail<sup>er</sup>/and every wholesaler had the opportunity of buying as much or as little as he wished. Everybody knew that, on the basis of the pork market, the hog market at that time, that the real market value of that product was three or four dollars a case higher than the price at which they could buy from the government. So of course some operators bought little and some bought more, and some bought still more.

With this kind of provision in here a retailer can continue as long as he likes selling at the old price, without any fear of other





retailers having the right to come in and deprive him of his stock, or raiding his stock.

It is very simple for him to protect himself, so long as the margin he takes on the basis of his old cost is not less than this percentage which would apply to that item, which would be 10 per cent. He is protected, so long as his margin is not less than that.

MR. FAVREAU: In other words, unless he loss-leaders them.

MR. SHELLEY: Yes. And if he loss-leaders them then other retailers can come in there and they can each buy \$300 worth of his stock. So that the whole purpose of that is to make sure that there will be no hardship. And there has been great care taken throughout the preparation of this brief to see that there should be nothing in here that would have the effect of raising the price to the consumer.

If we did not have this in there it would not create a problem particularly for the retailer because he could solve his own problem by raising the price. But that is what we do not want to do. We want to be in a position where we can submit to you a formula which would stand every test. That is why I feel we will have the backing of the consumers -- because it is not something that will have the effect of raising prices.

Then, to continue with the brief:

8. Ordering

The buying retail unit shall submit the



order in writing either by delivery to the selling retail unit on the appropriate day or by mail bearing the applicable post date mark.

In Saskatoon we have one newspaper. The afternoon edition, or the evening edition, is the popular one. It comes out and is sent out on the evening train to the country points. The Saskatoon store ads appear in that paper. Under this provision the merchants around the countryside, receiving this paper and seeing this ad, have the opportunity next day to mail in an order to that store for \$300 worth of that merchandise so long as the post datemark on the envelope is the next day. That is the way it works, and it works the same way in any other city. So the rights are not available merely to the merchants in the immediate trading area. It also becomes available to the surrounding countryside.

Then, I continue:

9. Payment

Payment in full settlement of the contemplated purchase shall accompany the order and shall be in cash, money order or marked cheque.

10. Acceptance

The selling retail unit shall inform the buying retail unit when the merchandise is ready for pick-up and the buying retail unit shall provide for pick-up with reasonable dispatch, either from the selling retail unit's



place of business or, if so requested, from the designated local supply base of the selling retail unit. In the case of perishables, due regard shall be given to the time factor in expediting sale and pick-up.

I wish to go back to the first part, which is very important because, as you can see, this does not necessarily impose any overhead cost of doing business on the retailer who is required to sell to another retailer under the provisions set out in this brief. He has the opportunity of saying to the buying retailer, "You go to my supply house. I have arranged there that your purchase will be ready at ten o'clock tomorrow morning. You can pick it up." So he need have no expense in connection with it at all.

THE CHAIRMAN: And also he would act as a wholesaler himself and have the goods shipped on his order direct to the other man.

MR. SHELLEY: Yes, that is right, although the onus is on the buying retailer to pick it up. The customary practice of course is that if the selling retailer diverts his obligation to the wholesale level then very likely the wholesale level would undertake to make the customary free delivery. Because, so far as I know, all wholesalers provide free delivery. I do not think I have come across any wholesalers who do not provide free delivery within their own immediate marketing area.

But this is a very important point. This



is not an imposition. It is not really an imposition on the selling retailer. We are not putting him to a great deal of expense.

The exception to that would be a clearing item. But because it is a clearing item he should be able to get rid of it. He has taken it into stock, handled it and priced it. But, still, it is a clearing item and he should be glad to get rid of it and get his money out of it.

Then, to continue:

11. Time Tolerance

Except in the case of sales under the provisions of Clauses 5 and 6 hereof, the selling retail unit shall be allowed reasonable tolerance in securing stock replenishment before being obliged to fill an order for a buying retail unit.

In the case of clearing, that provision is not necessary because the merchandise is right on the floor. And, in the case of a short supply item, the only time this formula comes into operation there is if it is used as a loss leader. And then that merchandise is right on the floor, too.

But, other than that -- and this is a very essential provision -- there is normal time allowed the selling retailer for making that merchandise available to the buying retailer. We must go on the assumption that the selling retailer, whatever stock he may have on hand, did not buy that stock with the idea of selling to other retailers so we





must not put him in a position where his own consumers and customers will be deprived of merchandise which they have a right to expect in his store. They must not be deprived of that right as the result of retailers coming in and buying up the supplies.

So, therefore, in the city stores we usually give him a matter of a day or two, and at the country points it would probably be a week.

MR. FAVREAU: If it happened on that particular day the supply has become short then you fall back on section 6?

MR. SHELLY: No, I do not think so. Because this is a different type of case. This is not dealing with a short supply. The buying retailer does not have access to the selling retailer and short supply goods unless they were used as loss leaders. And in that case that merchandise was on hand.

But here we are not dealing with short supply goods. We are not dealing with clearing items. We are simply dealing with goods in plentiful supply. But we have to give the retailer time to get in a full supply, or the supply he needs in order to supply other retailers.

MR. FAVREAU: I was thinking in terms of goods which normally would not be in short supply but which, in the meantime -- that is, between the time of putting on the sale and ordering from the competing retailer -- would have become suddenly in short supply.



MR. SHELLY: Yes.

MR. FAVREAU: You should read clause 6 in conjunction with clause 11 in that case?

MR. SHELLY: Yes.

MR. FAVREAU: But he could wait, so long as he could not get further replenishment?

MR. SHELLY: That is right. We cannot expect the impossible. Then, there is another factor which, in practice, is very important particularly at country points. If we did not have this time tolerance provision we would, in many cases -- and I shall stop for a moment until you have written your note, Mr. Chairman.

THE CHAIRMAN: No, go ahead.

MR. SHELLY: We would, in many cases, run into this situation that there are stores around the country, merchants, who are poor stock-keepers. From day to day they run out of things and have to go to their fellow merchant across the street and pick up items from him.

We certainly do not want any retailer to be in a position where he will be obliged, under those circumstances, to supply merchandise on short notice and allow this discount. If I happen to be a merchant at a country point like that and I do maintain a good stock, and my fellow merchant across the street is not, and he comes to me and says, "You are obliged to sell to me; I want three tins of that shrimp and four jars of those pickles" -- I will say, "Look here, my friend, that law says says that



I have time to bring that merchandise in with my next shipment in the normal way from my regular supplier". I would say to him, "You tell me what you want, and I will bring that merchandise in. You can come in a week from today and I will have it here for you." But he should not have the right to come in and raid my stock. That would be a nuisance. This paragraph prevents that sort of thing happening. This time tolerance is extremely important from that standpoint.

THE CHAIRMAN: The retailer requiring to deliver goods under the formula does not have to supply them in any case out of the stock he actually has on hand?

MR. SHELLEY: That is right. So that it will not create a hardship on the consumer, because the consumer is entitled to find that merchandise in the store.

THE CHAIRMAN: There might be some difficulty in putting that in legal language.

MR. SHELLEY: It takes care of it automatically.

THE CHAIRMAN: But when you come to deciding what normal tolerance would be, I think there would be some difficulty?

MR. SHELLEY: I do not think in practice there would be any difficulty, because it is pretty well the accepted thing that groceries are bought once a week.

THE CHAIRMAN: In legislation, you would



probably have to make it pretty specific.

MR. SHELLY: Yes; there is that, and other things, that would have to have very careful consideration. Then, continuing with the brief:

12. Premiums - Coupons - Contests - Free Goods, etc.

The selling retail unit shall extend to the buying retail unit identical premium benefits, coupon benefits, contest benefits, free goods benefits and any other such benefits as were available to consumers on the day or at the time, as the case may be, which governs the transaction, in so far as any sales by the selling retail unit to any buying retail are concerned under the provisions of this formula.

We run into different situations sometimes where with a \$5 purchase you get something as a free item, and so on. The same thing would carry right through automatically. The retailer buying \$300 worth of that merchandise, with every \$5 of it would be entitled to the same benefit, whatever its nature might be, as applied on the previous day when a consumer bought it in the store. I do not think there would be much difficulty in expressing that in legal language.

THE CHAIRMAN: How do you take care of the needs of the requiring retailer for these extra credits? He would not know how much that man was going to spend.

MR. SHELLY: There are types of variations.





I am just taking the one of a man who, who with every \$5 purchase, would get a certain gadget free of charge.

THE CHAIRMAN: You would give the gadget?

MR. SHELLEY: Yes.

THE CHAIRMAN: You would give the gadget to the retailer?

MR. SHELLEY: Yes. The buying retailer has exactly the same advantage.

THE CHAIRMAN: The same advantage as the customer would have?

MR. SHELLEY: Yes. In studying the loss leader laws they have in the United States and in some of the provinces of Canada, premiums and gadgets and so on have provided very good loopholes for circumventing the law. But I do not think we could express it more clearly than by saying that the same benefits available to the consumer on the preceding business day must correspondingly be available to a retailer when he makes a purchase in the amount of \$300 or, at his option, in a smaller amount.

THE CHAIRMAN: I was not sure of the meaning of this paragraph, whether it meant that the requiring retailer would have the same benefit the consumer would have had, or whether the retailer who was requiring to deliver the goods would have to provide for that dealer's consumers.

MR. SHELLEY: No, we do not go back to the consumer level.

THE CHAIRMAN: There is some difficulty in



that?

MR. SHELLY: Yes, I agree with that; it would be difficult. Then, we come to the paragraph in the brief which deals with combination sales.

13. Combination Sales

Wherever this formula refers to an item it includes, to all intents and purposes, any combination of items if and when a retail unit prices items in combination. In that case the \$300 purchase limit referred to in clause 3 hereof becomes multiplied by the number of individual items making up that combination.

If it is something that is three for a dollar, a loss leader combination of three different items at three for a dollar, the purchase limit for any retailer then is \$900, instead of \$300. That is the purchase limit of the buying retailer. Otherwise the effect of this could be minimized very greatly by having a selection of six or eight or ten items as a combination, and pricing them as a loss leader and using that as a circumvention.

MR. FAVREAU: Clause 12 in the brief worries me, so far as its practical application is concerned, where there are coupons or some other kinds of benefits. Let us say that theoretically your competitor gives one gadget for any purchase amounting to \$3. It is not limited to the purchase of one given or definite item.

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MR. SHELLY: It applies on anything, yes.

MR. FAVREAU: Do you wish to apply your



clause 12 to that particular situation? What do you do? Do you have the right to pay \$300, or to buy \$300 worth of any given item? Would you be limited to buying anything to the extent of \$300 and then for each \$3 your competitor would be obliged to supply you with one gadget?

MR. SHELLY: Yes, that is right. Because that is the privilege the consumer had, in buying anything.

MR. FAVREAU: He could not have three hundred?

MR. SHELLY: No, I am glad you brought that up, because we do run into that.

MR. FAVREAU: A hundred gadgets for each \$300.

THE CHAIRMAN: Would a buying retailer go to a man who has been operating this gadget device and buy anything that that man had in stock?

MR. SHELLY: Yes.

THE CHAIRMAN: At what price?

MR. SHELLY: Whatever the retail price of that selling retailer was on the preceding day.

MR. FAVREAU: That is, less 5 per cent?

MR. SHELLY: That is right.

MR. FAVREAU: And the gadget is free?

MR. SHELLY: Yes.

THE CHAIRMAN: Regardless of what the price of the goods may be, any dealer can buy from him, if he wishes to, at that price less 5 per cent or 10 per cent, as the case may be?



MR. SHELLY: Yes, except for these clearing provisions, and the short supply provisions.

THE CHAIRMAN: But, normally, he would not do it unless the price is low?

MR. SHELLY: That is right. The retailer would not buy from another retailer if it were merely on a par. If his cost from the retailer was the same as that at which his wholesaler supplied, he would not go to the retailer because the wholesaler gives him free delivery.

THE CHAIRMAN: So he would have to get it at a price which would be less than he would pay his wholesaler?

MR. SHELLY: Yes. Under certain circumstances this formula would have some degree of depressing effect on the price level at the wholesale. Take for example cigarettes, which are cut pretty badly in some parts of Canada -- so much so that by applying this 5 per cent discount on that retail price of cigarettes a buying retailer would save a little money by buying his cigarettes from a retailer instead of from his wholesaler.

But I think it stands to reason that, once a wholesaler sees that his retail customers are going to a retailer to buy their cigarettes, then he is likely to sharpen his pencil a little more. I am sure that effect would be there under certain circumstances. And I think it would be, very definitely, in the case of cigarettes at the present time.

THE CHAIRMAN: They might be persuaded to





do something they had not agreed to do in the past?

MR. SHELLY: Yes. I realize there is a problem there at the buyer's level in connection with cigarettes.

Then, next in the brief we come to indemnity in case of non-conformance. This has not been discussed with a lawyer. I am not a lawyer. I am merely expressing a thought here. What the legal implications are, I do not know. But I think this is a logical approach from the standpoint of giving effect to the appliance of this kind of a formula. It is as follows:

14. Indemnity in Case of Non-Conformance

In any case of non-conformance with the provisions of this formula the offending retail unit shall indemnify the opposite retail unit in an amount equal to twice the amount of the wholesale discount that would have applied on the sale which was defaulted.

That is a simple way of expressing it. Just how it would be expressed in legal form I cannot say.

THE CHAIRMAN: By "wholesale discount" you mean 5 or 10 per cent?

MR. SHELLY: Yes. So if I, as a retailer, refuse to sell to a retailer who comes to me to buy, then I would be obliged under this provision to compensate him to the extent of twice the amount of the wholesale discount that would have applied if I had made the sale to him.

And then, finally, item No. 15 in the brief



arises largely because of private brands. I think it is a very necessary provision, and it states:

15. Not Obligated to Re-Sell

The buying retail unit shall not be obliged to re-sell to the selling retail unit any part of the purchase made under the provisions of this formula except if offering the item to the consuming public at less than the competitive price.

Note: Without this provision the selling retail unit could promptly rebuy its private brand item (or any other item for that matter) immediately after selling to a buying retail unit, thereby circumventing the intent of this formula.

Let us say that I have a private brand of tea. My fellow-retailer comes along and says that he wants to buy \$300 worth of that tea. Unless we have this provision in here I would sell it to him and then, within the next five minutes, I would go back to him and, under the provisions I could say, "Here, I want to buy \$300 worth of that tea." So nothing has been accomplished.

We say in this paragraph that I cannot buy that tea back from that man unless he has undersold me. And I have put one word in there, which I did not have in before. The word "knowingly" should be in there because otherwise I, as the original seller of the tea, ten minutes later could raise my price by one cent and then he would be underselling me.



THE CHAIRMAN: Would not your rule about a reasonable time to clear goods from a reputable source of supply apply in this instance?

MR. SHELLY: Under these circumstances?

THE CHAIRMAN: Yes.

MR. SHELLY: That time tolerance provision automatically applies to this clause. It does not mean I have to supply \$300 worth of that tea to another merchant the exact minute that he comes forward.

THE CHAIRMAN: Would that not apply back again? Let us say that I am a retailer, and I come to you and say that I want \$300 worth of a private brand of tea. You come back to me and want to buy \$300 worth. I say, "All right, you have to give me time to get it from my normal source of supply" -- which is you.

MR. SHELLY: But I am still in trouble, because the next purchase I make from him he can say that he has the same advantage of waiting for his supply before supplying me.

THE CHAIRMAN: What I am getting at is this, that the private brand operator would not be able to get it back, under your formula.

MR. SHELLY: No, but if he does not get it back the penalty clause would apply.

THE CHAIRMAN: You have a private brand?

MR. SHELLY: Yes.

THE CHAIRMAN: And I come to you and say, "I want \$300 worth of that private brand of tea." You



sell it to me and say, "I want to buy it back again". I say, "O.K." -- and I have to sell it back to you. But you have to give me time to get it from my normal source of supply. How do you get that back?

MR. SHELLY: I agree with you that it does take care of it in a sort of indirect fashion. But I think the purpose of the law, if we could put it more clearly -- and I am thinking in terms of the average retailer. He would not think of this process that you are mentioning. I well believe that it would not take care of that. But, in terms of the thinking of the average retailer, I do not think it would occur to him to use that process. Therefore I think it would be better if we spell it right out.

Now, Mr. Chairman, that brings me to the end of the brief. I just wish to say to you how very much we have appreciated the opportunity of appearing before you. Whatever has been presented to you I would ask you to accept as an earnest attempt on our part to find a relatively simple answer to what we realize is a pretty complex problem. And if there are any other questions I would be happy to try to answer them.

THE CHAIRMAN: First of all, do you wish to add anything, yourself, that is not in your brief?

MR. SHELLY: I do not think I have anything to add at the moment, no.

THE CHAIRMAN: I wonder if any of the others





who are along with you would like to add anything at this time.

MR. GERIN-IAJOIE: Mr. Shelly, as counsel for the Commission, I should like to put a few questions to you to clarify your brief in some particulars. At the outset would you explain what you mean by the loss leader practice, in the accepted manner? Do you think there is any accepted sense of the loss leader practice?

MR. SHELLEY: I think there is, yes. And I think that is very clearly explained in this book -- loss leader selling in the accepted sense. May I quote from the book, page 279, which reads as follows:

THE CHAIRMAN: What is the heading?

MR. SHELLEY: It bears the general heading of State Legislation Prohibiting Sales Below Cost in the United States.

THE CHAIRMAN: That is American legislation?

MR. SHELLEY: Yes. It goes on to say this:

The type of legislation which has been expressly designed to control price cutting and to supplement resale price maintenance laws has been the legislation embodying generalized prohibitions against sales below cost enacted by a number of the states.

The general purpose of this type of legislation has been decided as follows:

"Although different in name and in several



provisions, all of the Acts are designed chiefly for the purpose of prohibiting 'loss leader sales'. These sales can best be explained by the use of a familiar example: A store which handles a wide variety of merchandise, to induce customers into the store, advertises and sells a well-known commodity below cost. The theory is that while the customer is in the store to purchase the lure, other items will attract his attention, and the lost profit will be made up and additional profit made from other sales at that time or later. Most of the statutes also prohibit the similar practice of giving a premium with each sale of a particular product. If the combined cost to the seller of the premium and the article sold exceeds the retail selling price.

In other words the premium is to be free. It must not raise the price. Then it continues:

The statutes are adopted primarily to prevent injury to the competitor of the seller below cost. However incidental protection is afforded the consumer who might improvidently buy other articles in pursuit of the 'loss leader' or premium. Also the good will of the producer of branded goods is protected by a prohibition against his product being sold at a normal profit by some retailers at a ridiculously low price



below cost by others in the same community.

Now, in response to your question, we are not concerned with that part of it. But I think this does indicate what is meant by loss leaders in the accepted sense of the term. In other words, let us say that I as a retailer happen to have 200 cases of preserved peaches on hand, and the time is Saturday noon. These peaches are beautiful, nice and ripe, but by Monday they will be only good for the nuisance man. We will say that these peaches cost \$2 a case. I put a sign on them, "Saturday noon, to clear, \$1 a case".

Now, I take a 50 per cent loss on those peaches. But that is not a loss leader. No, that is not a loss leader at all.

THE CHAIRMAN: That is almost distress selling, is it not?

MR. SHELLEY: Yes, it is.

MR. GERIN-LAJOIE: Then, you have quoted from page 279 of the Director's Report, where there is reference to selling below cost. That is the cost to the retailer, without taking into account any overhead cost, or anything of that nature?

MR. SHELLEY: Yes.

MR. GERIN-LAJOIE: The so-called normal margin of profit?

MR. SHELLEY: Yes.

MR. GERIN-LAJOIE: So that if one retailer, sells for instance, at below what we might call the normal margin of profit, but not below the cost, that would



be loss leadering in the accepted sense of the term, would it?

MR. SHELLY: I would say in regard to that that you get to the point there where it is a matter of opinion. Different people have different opinions on exactly where the line should be drawn. There is a line somewhere. But I do not think that anyone, including even the statisticians, have ever got down to figuring it out exactly as to what the cost of doing business is in connection with pepper as against salt, or as against coffee or peanut butter, and so on. And until we have that kind of thing you cannot get at it.

But I think you can tell from the nature of the formula I submitted this morning exactly what, for the purposes of this formula, loss leader selling is.

MR. GERIN-LAJOIE: I am just wondering, because from what I gather after reading the formula loss leadering would be selling under the normal margin of profit.

MR. SHELLY: No.

MR. GERIN-LAJOIE: Or a margin of profit.

MR. SHELLY: Not necessarily, at all. No -- and I am glad you mentioned that. It is not necessarily at all, because you know from the submissions that have been made to your Commission from time to time recently that you have had complaints along this line where it has been stated that certain large retailers buy cheaper. Now, I am not saying that





they do or that they do not -- although we all know that they do.

Different manufacturers have the legal right to specify their own categories, and they have different prices for different quantity categories. They observe that, and it is legal. So, consequently, although the small retailer and the large retailer are subject to the same law yet they have different costs. Under this formula we propose here it can very well be that a large retailer can make a profit while selling to a small retailer -- give him a discount and still make a profit; and the small retailer buys at less than he could buy from his wholesaler.

So the question you put to me -- I say I do not agree with the inference there. This does not force any conclusion to the effect that there has to be a profit, necessarily.

MR. GERIN-LAJOIE: A profit on his buying price.

MR. SHELLY: Yes. The retailer who buys from another retailer is sure, under this formula, of some recapture of his overhead cost. But that is not to say that we cannot accept from that statement that this formula imposes a cost-plus, by any means -- a cost-plus arrangement. Because we do not know what the cost of the buying retailer will be. It can be anything. It depends upon the buying position of the selling retailer.

MR. GERIN-LAJOIE: I do not have in mind



the process of rebuying. What I have in mind is what you consider to be loss leadering. And I am considering this situation: A retailer buys from a wholesaler. Is he loss leadering, in the sense you mean here if he resells at the same price that he bought from the wholesaler?

MR. SHELLY: Is he loss leadering?

MR. GERIN-LAJOIE: Yes.

MR. SHELLY: I know he would go out of business if he did it -- if he sold everything that way.

MR. GERIN-LAJOIE: I want to know what you mean. Because you are quoting something which mentions selling below cost. One may sell at cost without making any profit to cover his overhead?

MR. SHELLY: Yes, sure; we do that all the time in clearing up perishables.

THE CHAIRMAN: Would it be fair to assume, perhaps -- and I am not sure about this -- but would it be fair to assume from the brief that what you have in mind as loss leadering would be a retailer who sells at a markup that is less than 5 per cent on some things and 10 per cent on other things, and that unless he is getting that much he is really loss leadering?

MR. SHELLY: No, I would not say that necessarily. And I think if we tried to use that approach in trying to solve this problem we would not get anywhere. Because there we get into all these different costs based upon different



quantities.

THE CHAIRMAN: What we are trying to find out is where you draw the line, for the purpose of working out your formula. Where do you draw the line between loss leadering and not loss leadering?

MR. SHELLY: I am very glad to explore this angle. It just brings to my mind what I said I mentioned when meeting with the committee of the executive of the C.A.C. I made this remark, that what I have here is something that is simple.

Now, I have no objection -- and may I say that this is what I said to those ladies -- I would have no objection whatsoever if the powers that be feel that it is to the advantage of everyone concerned to evolve a solution by way of having six or eight or ten categories, or as many as you like, instead of having two.

We can really get down to breaking it up into fine points. I have no objection to that approach at all. My whole purpose in putting it this way is that it is simple; and I think there is much to be said for keeping the thing as simple as we possibly can.

Also, knowing the business as I do know it, I would say that under this formula we are not going to have price increases, and we are going to have something that is effective and reasonable and meets the problem that we have. That is what I have been aiming at -- to meet the problem that we have, without at the same time hurting the consumer. And so, in the



interests of simplicity, I have brought out only two categories.

MR. FAVREAU: We are not questioning the advisability of there being only two categories. What the Chairman is pointing out is that in a case where your regulations would exempt a selling retailer from the obligation to sell to a competing retailer, and in view of the fact that these exemptions would indicate that he can no more profit by them, if he has actually sold at less than 5 per cent or 10 per cent ---

MR. SHELLY: Yes.

MR. FAVREAU: Should we not conclude from that that it is your opinion that whenever there is a sale of less than 5 per cent or 10 per cent there is in fact loss leadering?

MR. SHELLY: No, you should not conclude that, from that provision. I would be very happy if anyone could show me another approach which would accomplish the protection on the one hand, under certain circumstances, for the selling retailers and guarding against circumvention on the other hand, under other circumstances. I have not been able to think up any other approach. And when I used this approach I was very conscious of the fact that it lent itself to the interpretation which you are are questioning at the moment. I am glad it has come out in the open.

MR. FAVREAU: It is not an objection.

MR. SHELLY: No, I understand that.





THE CHAIRMAN: We are not really trying to put an interpretation upon it. We are just trying to find out what you have in mind, yourself, as to what the line would be between loss leadering and not loss leadering, or if you have any specific line.

MR. SHELLY: No, I have no specific line in mind on that.

MR. FAVREAU: Let us say that we have an item which is really in short supply.

MR. SHELLY: All right.

MR. FAVREAU: Now, according to section 6 in your brief, the retailer is not obliged to comply with the obligation to sell it for \$300, unless he has actually sold it at less than 5 per cent?

MR. SHELLY: Yes.

MR. FAVREAU: Then I presume that this will be -- I will not say "punishment" -- but this will be the consequence of his having sold at less than 5 per cent or 10 per cent. Notwithstanding the fact that there is actually a short supply, just the same he will be obliged to sell to his competitors?

MR. SHELLY: Yes.

MR. FAVREAU: Now, why in that particular circumstance would you attach that significance, even in the case of short supply, to the fact of his having sold at less than 5 per cent or 10 per cent?

MR. SHELLY: I am glad you mentioned that. I think the first point in connection with which we are in agreement on that score is this, that the



retailer in the position of having short supply goods like that must be protected on that supply. He must not be put in the position where another retailer can come and deprive him of that supply. That is our only objective.

Now, in practice, there is no problem here because he is not going to cut the price of that item. He has only a little bit of it. He knows that his customers want more of it than he can get. So he would be very foolish if he were to cut the price on it, and in more ways than one. He has overhead to meet and he has got to make money somewhere to meet that overhead, and he will have to have something with which to pay his income tax, we hope.

And, in the second place -- and here is a very important point -- in the second place if he did use that item for price cutting purposes, it would be nothing but pure deception, so far as the consumer is concerned. And those things do happen. I have said that in practice it is not a problem because it does not happen much. But it does happen -- you will find a retailer who will seize an opportunity like that, where an item is in short supply, and they have only a little bit of it, they will make a big splash with it in order to get the crowds of people into the store. And on that item they would have actually only enough to sell about 5 per cent of the people who come.

MR. FAVREAU: So that you feel that even



if it is not really loss leadering it is at least deceptive?

MR. SHELLY: Yes, it is deceptive.

MR. FAVREAU: Whenever someone has goods in short supply or goods on which there will be a market advance, and actually sells at less than 5 per cent or 10 per cent ---

MR. SHELLY: My point is that all we are trying to do is to protect that merchant so that he will not be deprived of that little bit of short supply item he has on hand. I have not been able to think of any other way that we can protect him on that short supply.

MR. FAVREAU: Why is it that when he starts selling at less than 5 per cent or less than 10 per cent then you do not any more give him protection?

MR. SHELLY: There we have a legal problem, from the standpoint of deciding what item is a short supply item, and what is not. This way it takes care of that; this is a simple way of doing it. Now, can you think of any other way of doing it?

MR. FAVREAU: I am not thinking of any other way. I am trying to get down to the philosophy of your regulation. Let us say that actually there would be a short supply -- and that can be proven. Let us say that actually the sale has been made at less than 5 per cent or 10 per cent, and that particular retailer would no longer be protected by your clause.



MR. SHELLY: You say that the 5 per cent or 10 per cent provision is not required?

MR. FAVREAU: It may be required; but why is he punished only if he sells at less than 5 per cent or less than 10 per cent? Is it because when he sells at less than 5 per cent or 10 per cent it begins to be either loss leadering or deceptive practice?

MR. SHELLY: Yes, deceptive practice -- definitely it is deceptive practice. I will stand by that. If it is an item in short supply and used as a loss leader, then it is even more deceptive than it is under any other circumstances.

MR. FAVREAU: I am just trying to find out why, once he gets to the point of selling under that 5 per cent or 10 per cent he loses the privilege of the exemption. There might be some reason in commerce or trade which would lead you to believe that at that particular point he has either acted in a deceptive fashion or that he has been loss leadering. That is why you deprive him of the benefit of the exemption?

MR. SHELLY: Mr. Commissioner, I would say this, -- and I do not know if this is a satisfactory answer to you -- but I would say this, that in practice ---

MR. FAVREAU: I do not want "satisfactory" answers; I just want you to explain it.

MR. SHELLY: I think, in practice, that if we do not have that in there we will find there is





incentive to raise prices. And, as a matter of fact, that is what we do not want to see happen. Just as I mentioned in connection with the canned pork, if we have that thing in there we have something to anchor to. If we do not have it there, then you have the incentive on that retailer to raise his price for fear that somebody else will come and buy his stock.

THE CHAIRMAN: There is one thing I have not got clear yet. Let us suppose that a cannery has a large supply of canned goods -- we will say canned peas -- which, for some reason or another, has not sold very well. They have a lot of those peas left on hand, and it looks as though they will not dispose of them easily in the regular way. You are a retail organization. You approach them to buy their peas and they come to you and say, "We would like to unload these because it looks as though they will be a burden. We will give you a special discount of 20 per cent to dispose of them, and get them off our hands." Then you take that up. What happens then under your formula?

MR. SHELLY: Nothing happens. It just depends on the pricing practice in that case.

THE CHAIRMAN: But you, having got a 20 per cent discount, fear that your ordinary marketing markup would result in a price which is below the ordinary wholesale price to the other people.

MR. SHELLY: Actually, that sort of thing, in practice -- I think I can say that it does not



happen in the food field.

THE CHAIRMAN: You may be right about the food field, but it does happen in other fields.

MR. SHELLY: But you see, in foods the margins are so slim; and it applies at every level -- the manufacturing level and the wholesale level and the retail level as well. And all these canneries, and other manufacturing concerns, if they are big enough they have their own sales organizations throughout the Dominion and their own local men here in Regina or Winnipeg, and the other cities. And if they are not that big, then they have brokers. And those brokers -- it is their job -- have the responsibility of selling that product for that manufacturer at the highest price they can get for that manufacturer. And that is the way it works out in practice.

Then the manufacturer -- let us say that this canner has a surplus of peas. He issues instructions to his own sales force or his broker; he gives them a certain price to get rid of that stock. They make very little headway. Well, he reduces his price a little bit again. But they sell to everybody. We are not dealing with a Sunbeam Mixmaster. They are different. In that case you have a franchise arrangement, and all that sort of thing. But here we have something where these brokers go to everybody in the trade whom they sell. And if they cannot get action at the price that has been authorized by that canner they will go back to him and tell him, "You had better reduce to the extent of 10 or 12



cents a case", and then they go around again.

It is not a matter of going to one man, because if they go to one man they have to give that one man a bigger bargain. They would get a smaller price for the canner than if they spread it out. So in practice that just does not happen.

THE CHAIRMAN: The sort of thing I was suggesting you say apparently does not happen?

MR. SHELLEY: No.

THE CHAIRMAN: What I have in mind -- and we have had some indication that it does happen in other fields -- is that a large retail organization might get a very special deal without hurting the manufacturer in particular.

MR. SHELLEY: Yes.

THE CHAIRMAN: Because they eliminate the jobbers.

MR. SHELLEY: Yes.

THE CHAIRMAN: They eliminate the jobbers entirely. The whole thing is done in one motion, so to speak.

MR. SHELLEY: I understand.

THE CHAIRMAN: With all the intervening steps and all the intervening things weeded out. Even though the manufacturer gets a smaller price he is just as well off as if he had operated in the other way.

MR. SHELLEY: Yes.

THE CHAIRMAN: I wonder if that happens at all in your business.



MR. SHELLY: No.

THE CHAIRMAN: Then, if it does not happen, the question does not arise.

MR. SHELLY: No, it does not happen in the food field.

MR. GERIN-LAJOIE: I should like to put my original question in another way, if I may, Mr. Shelly. Your whole brief seems to be based on the assumption that loss leadering, as you call it, is widespread in Canada. I should like to know what type of loss leadering is widespread in Canada. Is it selling below cost, or otherwise?

MR. SHELLY: Loss leadering below cost or otherwise -- it varies, as I have said, in the brief. The prevalence of loss leader selling depends somewhat upon the state of the general economy. During the war years, which were short supply years, I do not suppose there was any loss leadering. I do not recall any loss leadering at that time at all. And there certainly is not as much of it now as there was before the war, in the depression years. That was the extreme experience we had. There is getting to be more of it. May I, in response to that, read a little clipping from the press?

MR. GERIN-LAJOIE: Yes.

MR. SHELLY: I was in Cleveland about a month ago at the Supermarket Institute convention, and while there I came across this Supermarket News of New York. This is dated May 24 of this year.





There is one little item here headed: Below Cost Coast Sales on Increase. That is referring to the California coast. The item is dated at Los Angeles, May 23, and states:

Below cost sales are again on the increase in this southern California market, according to trade observers here. The primary reasons given by some supermarket operators for this trend, in defiance of the heretofore generally accepted California anti-loss leader law seems to be a levelling out of volume gains during the past month as compared with gains recorded through the last year and early 1954.

While supermarketeters note that the volume is still plenty healthy, they concede that slowing down in the degree of gain has caused some food store operators to hold prices down below the 6 per cent markup rule of thumb established by the state unfair practices act. Because this marketing area is a largely competitive one, retaliatory action usually follows any below-cost selling originated by an operator in most sections of southern California.

So that is the point. It confirms what I have just said, that under less favourable economic conditions you have more of it. And I would say that some of the loss leader selling across Canada now is more of a concealed nature than it used to be.



You do not pick canned tomatoes to do it with. You pick items where you cannot pin them down so much. Take meat, for example, beef. The retailer buys a side of beef and pays so much a pound for the side of beef. But no one except an expert can come in and say, "Your cost on steak has been so much." He cannot say, "In selling that steak at this price you are actually losing 20 per cent on it."

So, you see, there is lots of opportunity in the food field for loss leadering without having it apparent to the casual observer. It is only known to the competitors, to the people who are in the trade. And, speaking about meat, I would say that the meat packers know what is going on; and anyone who is familiar with that type of business knows; but so far as the general public is concerned, if you were to ask them they would say, "No, there is no loss leadering. We are not aware of it." They would not know. If they were buying canned tomatoes at 50 per cent of cost, which would be away below the normal cost, they would. But not meat. In connection with meat the same thing can apply to an even greater extent, and the consumer would not be suspicious of it.

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THE CHAIRMAN: It is fairly difficult with regard to meat, because there are some meat stores that will specialize in top grade meats while there are others that do not go in for steaks at all. They get special cuts from the carcass. And if they



do that with the major part of their business it affects the relative cost of doing business for every dollar's worth they sell. I would say that even an expert would have a pretty tough time to pin them down.

MR. SHELLY: Yes, that is right. And that is the beauty of this formula. It does not care whether they are steaks, or anything else. It is self-policing because the competitors themselves know exactly where that borderline is. And once it goes below that borderline that competitor is going to come and buy his steaks, or what-have-you, from the retailer instead of buying them from the packing house.

THE CHAIRMAN: Wherever the cut in price by one dealer is sufficient to mean that when you take another 5 per cent or 10 per cent off, as the case may be, the price of another retailer would be less than the wholesale price, then they buy from the retailer?

MR. SHELLY: Yes. And may I just elaborate upon one point before you ask the next question. Speaking of this whole loss leadering problem, it actually divides itself into two parts. One is the short-term effect and the other is the long-term effect. This meat situation to which I have referred -- I would put that in the class of the long-term effect. It may not be visible to the consumer, but the first thing you know you find that many people are not in that line of business any more. Then



comes the time to recoup on the losses that have been taken.

You have been speaking about loss leadership, and I have said that it is not too apparent. Therefore, what is the purpose of it, what is the object of it, if it is not apparent? You sell canned tomatoes at half price, and it is apparent to people who will flock in and pick up those tomatoes; and you have there a short-term effect. But you do have the propaganda effect. However, in the meat situation you do not have that propaganda effect. It has the other effect of putting the other man out of business, and then after a little while you have only a few people left. Then comes the harvest.

MR. GERIN-LAJOIE: Would you have any evidence to show that that has happened in the Dominion of Canada?

MR. SHELLEY: Yes.

MR. GERIN-LAJOIE: In the last three years?

MR. SHELLEY: Yes. I have none before me at the moment, but I can get that information.

MR. GERIN-LAJOIE: The Commission will appreciate having it, if you would, please.

MR. SHELLEY: I will let them have it.

MR. GERIN-LAJOIE: Could you point to that part of the Director's Report to which you were referring when, in the third paragraph of your brief, at page 1, you say that --

The report further confirms that the





loss leader device has been used by all categories of food retailers but that in some cases it was apparently used only as a seemingly necessary defensive measure.

Would you point that out?

MR. SHELLY: It is right in there. I do not think I have marked the page in the Director's Report where it appears. But I know it is in there. I have not noted the page number, but Mr. MacDonald has it right in there. Maybe I could put my hand on it later.

THE CHAIRMAN: What you have in mind is what was treated in the Director's statement?

MR. SHELLY: Yes.

THE CHAIRMAN: Perhaps there is no need to discuss it further here.

MR. SHELLY: It is right in there, the fact that in some cases it was used as a necessary defensive measure. And I will say right now I am one of those fellows who have been in that position.

MR. GERIN-LAJOIE: Meeting competition?

MR. SHELLY: To me it was a matter of being in that position or passing out of the picture; I will say that.

MR. GERIN-LAJOIE: You had to sell at those prices because other people were doing it, is that right? Is that what you mean by "defensive measure"?

MR. SHELLY: I have seen ---

MR. GERIN-LAJOIE: You would lose all your business unless you cut your prices; is that it?



Lots of people have said that.

MR. SHELLY: My associates and I have been in business a long time, and we have always operated on the basis of protecting the consumer, ever since we started business. The consumer has never been in the position where they could get it for less than we had it in our store. And regardless of whether anybody interprets it as loss leadering or not -- and I do not mind putting it that way -- I have used that deceptive device, knowing it to be a deceptive device, as a necessary defensive measure.

MR. GERIN-LAJOIE: You were meeting competition, meeting loss leadering?

MR. SHELLY: Yes.

MR. FAVREAU: Forced into it?

MR. SHELLY: Yes.

MR. GERIN-LAJOIE: And using the same methods as your competitors?

MR. SHELLY: But not starting it.

THE CHAIRMAN: Apparently you believe in Gimble's code?

MR. SHELLY: Absolutely.

MR. GERIN-LAJOIE: The brief mentions that it applies only in the food field. Do you have in mind that the food field should have special protection, or that you wish to envisage only the formula being a formula which would be applied to that field, and that it should be general legislation



covering the whole of the trade?

MR. SHELLY: I am glad to answer that. I would like to elaborate upon it. I have been keenly interested in following the material that has been submitted to the Commission during the last few months. I was quite concerned that, unless something was brought up that was of a more practical kind, or offered a more practical solution than had been submitted thus far, that we might end up here in Canada with the same pattern of legislation that they have in the United States, and in a few provinces of Canada. And I know that that is extremely objectionable, so far as the consumer is concerned. That I am sure of.

There is a problem here. I recognize that the people who have appeared before this Commission, prior to this date, have no doubt been very sincere in submitting what they have submitted as being the best solution that they can see. But certainly, as a food retailer I was very fearful of that approach. As an operator I was fearful of it. And, for another thing, I do not like anything that is not going to be at least reasonably acceptable to the consumer. And I think I can say that in the United States, where this sort of legislation is used, although it is serving a purpose, generally it is unpopular legislation.

THE CHAIRMAN: Do you mean the fair trade laws?

MR. SHELLY: The loss leader law, with



respect to fair trade. I think to the public it is generally unpopular legislation. That was the position I was in. I gave it a lot of thought and I asked myself, "Is there anything we can come along with that will be an improvement over what has been provided?" I am now coming to what you have asked me. I am speaking for the food dealers.

59) We have Mr. Walker here, who is the Secretary of the merchants association in this province. When I first developed this idea I went to see him and spoke to him and asked him to tell me what he thought of it. He knows from experience that, so far as this province is concerned, our main problem so far as loss leadering is concerned is food. He was quite impressed with that approach. And not long after that he gave me a free hand to prepare the brief on behalf of the Saskatchewan people. And I prepared it and took it to him, and there was not one word changed in it. And there it is. It was acceptable to him. I might say that just one sentence was changed. I should say that Miss Mabel Timlin had a recommendation by way of clarification. That part was changed, just by way of clarification.

I was going to Cleveland to the convention and, while on the way, I passed through Toronto and dropped in to see Mr. Randsand discussed it with him. It looked good to him.

I am not going to embarrass Mr. T. D. MacDonald, but Mr. Rands phoned Mr. MacDonald, and





we made an appointment and took the plan to his office and spent a few hours with him in going over this plan. He felt that the Commission would be very much interested in having this submission.

Mr. Rands is the National Secretary of the food division of the Retail Merchants Association, and also the National Secretary of the Dominion Board of the R.M.A. I think he will agree with me when I say that in his experience in that position his main problem has been in the food field; is that not correct?

MR. RANDS: Yes.

MR. SHELLY: I do not mean to say by that that it is limited too much to the food field. But you have to recognize this -- and I am sure you are aware of it -- that there are certain trade sections associations which are not affiliated with the Retail Merchants Association of Canada. The appliance dealers are one. They have their voice; I am not interested in refrigerators. I am interested in food. I am telling you how this developed.

This submission was prepared on the basis of food. But I realize that in some other trades there are other ramifications that arise, such as what people in the field feel and do not feel. And I do not think it is my business -- because I am a food man -- to try to find out what may be the best for other fields.

I know there are other ramifications



there; but I do believe this sincerely that other fields will find in this formula an approach which, with certain adaptations and changes probably would meet the problems of other trades just as effectively, and would have something that the consumer does not have to resist. I think that will take care of itself.

Then, Mr. Fairbairn, President of the R.M.A., is a hardware man. He is a keen operator. He came to me two or three times while I was in Edmonton about this matter. He said, "I am interested in this in connection with the hardware field." He was particularly speaking about appliances, the sales of appliances. He said, "The more I think about it, the more hopeful it looks as the answer in that field too."

MR. GERIN-LAJOIE: What are your views with regard to the possibility of making this formula a general one for the whole trade of Canada?

MR. SHELLEY: I will say in that respect that at the Retail Merchants' annual meeting in Edmonton just a few days ago a decision was taken that a consolidated brief will be presented by the Retail Merchants Association of Canada, to embrace all the other trades in which the Retail Merchants Association of Canada is interested. I have no doubt that this brief will comprise part of that consolidated brief. But of course we are dealing with this now, so that this no doubt will be taken care of pretty well. However, I do know -- and I



think I am right in saying this -- that the other trades, so far as the Dominion R.M.A. is concerned, are going to study very carefully the expansion of this principle and the adaptation of it to other fields. And that will be submitted in due course to you in the form of a consolidated brief.

THE CHAIRMAN: From what you said, you are interested primarily in food. You would not want to be too dogmatic about the application to other fields?

MR. SHELLEY: Yes, it is not my business to do that. I have a new idea here which I think the other people will be interested in as soon as it comes to their attention. I was careful not to have publicity on it prior to this hearing today. But I think that once it is in the press and on the radio, even those associations that are not affiliated with the Retail Merchants Association of Canada will take a second look at their problem and see whether this offers the approach.

THE CHAIRMAN: We have had this put to us with regard to appliances, and perhaps it is a different picture from what you have in the food field, when some retailers and manufacturers have told us that they get 35 or 40 per cent margin to work on, because of service charges and other things. On the other hand, some retailers who have been pretty prominent in cutting prices below the suggested list prices have told us that they operate on about 18 per cent. One man told



us that he was operating on an 18 per cent markup on all his appliances and that he was making a great deal more money than when he sold at higher prices. He said that he had done it for some years and was continuing to do it, and he said that changes were taking place in the industry, and had already taken place, which meant that about 18 per cent to 20 per cent markup was adequate. That was proven to be so in his case. If another man needs 35 per cent, your formula does not help him much.

MR. SHELLY: No, but I would say this, that this formula we recommend would be no protection to the inefficient food retailer. And we are not trying to protect that man, at all. We are always going to have a lot of them because, by its very nature, the food field is such that it is so easy to get into it, we will always have a lot of them. They come in and they go out -- in and out all the time -- and nobody is trying to protect them.

THE CHAIRMAN: Yes, there are always people going into and out of the food business; and there are a great many bankruptcies, I suppose?

MR. SHELLY: Yes.

THE CHAIRMAN: People who do not understand the business.

MR. SHELLY: Yes; and if we did not have that situation we would have too many stores. Once you get to the place where you are holding an umbrella of some sort over the inefficient, then







it encourages a multiplicity of stores, more than are justified for the proper servicing of the community.

THE CHAIRMAN: Would you care to express any opinion as to whether there are too few or just enough, or too many retail food stores at the present time in Saskatchewan?

MR. SHELLEY: I believe the industry takes care of this. There is very keen competition in the food field. My only concern in connection with that is this, that we should see to it that we have a formula so that competition will be honest. That is all I am concerned about -- honest competition free of deceptive devices. From there on, let nature take its course.

THE CHAIRMAN: Your idea is that there is no artificial support of the industry requiring artificial means to put people out of business, but that competition will take care of that?

MR. SHELLEY: Yes; and in order to ensure that we have sufficient members and sufficient people taking part in price competition, we must do something about these deceptive devices. And that is why I have presented this formula today.

MR. GERIN-IAJOIE: Do you think that your formula, either limited to the food business, or extended to the whole trade in Canada, might have a freezing effect upon trade practices in Canada, by applying a certain margin of profit to a certain type of merchandise and some other margin of profit



to other types of merchandise?

MR. SHELLY: No, it does not impose any margin, any specific margin of profit.

MR. GERIN-LAJOIE: A minimum?

MR. SHELLY: No, it does not. Because, in my book, in these days of quantity buying, it puts the small man in a position where he has access to merchandise at a lower cost than he has today.

MR. GERIN-LAJOIE: But, actually, if a retailer is obliged to sell to another retailer, because he sells under 5 per cent markup ---

MR. SHELLY: Yes.

MR. GERIN-LAJOIE: Well, that is an indirect obligation imposed upon him to sell at a minimum markup of 5 per cent, is it not?

MR. SHELLY: No, not necessarily. He may still be making money on it. He can transmit that order to his wholesaler supplier. If it is a big order -- if he is a big buyer, who buys in quantities, he can make a profit on it. And the little man is in a better position than he was before.

MR. FAVREAU: But if it is in short supply ---

MR. SHELLY: Not if it is in short supply. But, in practice, there is no problem of short supply. We have to protect the man so that he will not be deprived of whatever allocation of short supply items was available to him. But if a short supply item does become low in price in the sense we are



talking about, I think we have generally agreed that would be a deceptive device, in any event.

MR. GERIN-IAJOIE: I wonder if I understand your brief, that a retailer who would have access to very favourable wholesale markets, or wholesale sources of supply -- a retailer who would manufacture his merchandise himself, at a lower cost than other retailers could get from their own sources of supply -- that retailer would be obliged to give part of the benefit of this lower manufacturing cost to his competitors?

MR. SHELLY: No, he would not be obliged to do that. He could still operate on a basis where he might lose two or three or four times what otherwise would be his profit. He could reduce his price to the extent of two or three or four times his normal profit without invoking the operation of this formula.

MR. GERIN-IAJOIE: How does that work out? Do you mean because his normal markup would be more than 5 per cent?

MR. SHELLY: No, we are speaking about food. In the food field the normal profit is about 2 per cent.

MR. GERIN-IAJOIE: Do you mean the net profit?

MR. SHELLY: Yes, the net profit -- roughly 2 per cent. This formula allows scope for honest price competition to the extent of fully half the gross margin. The gross margin in the case of a typical



independent retailer is about 14 per cent more or less. In the case of chains, because they perform the double function of wholesale and retail distribution, it is more than that. So that, therefore, this allows scope, without invoking this formula, of having that efficient retailer, who owns his own factory -- having him operate on the basis of such low prices that he would not make any profit at all; and on top of that would give away, through price reductions amounts equal to three or four times his normal profit, without even making this formula operative.

62) MR. GERIN-LAJOIE: Do you mean that if a retailer had his own sources of supply and was manufacturing himself he could not sell bread, for instance, with a markup lower than 10 per cent?

MR. SHELLEY: Well, that depends upon ---

MR. GERIN-LAJOIE: He is operating on a strictly business basis, without losing money.

MR. SHELLEY: Well, when you raise that question you are getting into the question of how much more efficient in these days of efficient modern bakeries -- you are getting into the question of how much scope there actually is for one manufacturer or bakery to be lower than another in cost. I think you get into that question. And so, if there is a spread of 10 per cent -- and I do not think there could be that much -- as between different efficient operators -- and I am not taking high-cost and low-cost operators -- but you are





speaking of a retailer who has his own bakery. Well, undoubtedly in that same area there are other efficient bakeries too. And so, unless you have a terrific spread in cost of production in those different plants, efficient plants, there is no great problem. There is no resultant demand upon the retailer to supply other retailers, through his retail channel, unless there is a terrific spread. And I am not aware of anything like that.

MR. GERIN-LAJOIE: But your view is that there cannot be such a spread between the retailer who buys from the manufacturer, through normal channels, and the retailer who manufactures for himself?

MR. SHELLEY: I came across this information in Ottawa a few weeks ago, while I was there -- and I think it is correct, because it came from a good source -- that the lowest margin taken on bread anywhere, except for possibly the loss leadering which happened in Montreal one week -- that is the exception -- other than that the lowest margin anywhere in Canada on bread is 12 per cent.

So that when you come to this efficient retailer who has his own bakery, he could still turn around and, without incurring any overhead so far as his retail operation is concerned, he could supply another retailer and he could say to the other retailer, "You go to my bakery and they will supply you." And he could still make 2 per cent



profit on it. If he loses 10 per cent discount from the retail price, he would still have 2 per cent profit on it. And he would be in a better position than that, because this retailer in this situation has to go to that bakery and pick up that bread; whereas, normally it is standard practice for a bakery to give delivery free of charge. I think that is the situation in Canada today on bread.

MR. GERIN-LAJOIE: I have just mentioned bread as an example.

MR. SHELLEY: Yes, and it is a good example, too.

THE CHAIRMAN: Did you read about the incident in Montreal?

MR. SHELLEY: Yes.

THE CHAIRMAN: How would it apply there?

MR. SHELLEY: Well, in those circumstances the retailer would be buying from that retailer.

THE CHAIRMAN: The retailer was not selling at a loss. He had a special deal with a manufacturer, I understand, under which the manufacturer gave him five cents credit on every loaf of bread. The manufacturer did that. Is there any assurance that the manufacturer would do that for other people?

MR. SHELLEY: But under this formula that retailer would have been obligated to supply other retailers at the price at which he was retailing, less 10 per cent.

THE CHAIRMAN: If the facts were as they



gave them to us, would that be fair? It was a rather curious statement of facts.

MR. SHELLY: It was a very unusual situation, true. And I think we can say that it was a fair situation for retailing, generally.

THE CHAIRMAN: I understand that.

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MR. SHELLY: And therefore the operation of this formula would be such that this retailer who was, we will say, the offender -- through him that burden of the formula would be translated or would be diverted to the manufacturer who was really the offender. Because certainly he was practising discrimination, which is not the intention of the government.

THE CHAIRMAN: You cannot say that the retailer was guilty if the facts were as they were given; you cannot say that the retailer was loss leadering, because he made his full, normal markup.

MR. SHELLY: Yes.

THE CHAIRMAN: And he got his five cent cut which he passed on to the consumer, which knocks everybody else out of the picture, for the time being.

MR. GERIN-LAJOIE: Looking at the top of page 2 of your brief, it would seem you take for granted that loss leadering has a degrading effect on the industry as a whole, and loses for it the respect of intelligent consumers. Do you have any evidence of such effects on the industry and trade?

MR. SHELLY: There is all kinds of evidence



of it; and there has been submitted to Mr. MacDonald over a period of time evidence to show that loss leader selling, in the sense in which we are dealing with it here, does result in practices which are degrading to the industry.

Another thing about it -- and I do not think I am getting away from the subject when I say this -- is that it certainly creates loss of confidence on the part of the consumer, and also causes confusion.

I will give an example of that. Take, for instance, in the preserving fruits season, when peaches come on the market in pretty generous supply. Of course the first peaches that come on are high in price, and they gradually go down in price. Then, the market reaches a certain level where it will probably stay for the season. Then some retailer thinks he is smart, Maybe his cost on a case of peaches was \$2 and he runs a week-end special of \$1.89, which does not look like much of a loss. It will bring him extra people into his store.

And, do you know what happens after that? Well, he only intended that for a day or two. Those peaches should have been selling probably at \$2.40 or \$2.35, or something like that. Other retailers did not feel like selling those peaches at \$1.89; at the same time they do not like to be shown up that they are highway robbers by selling at \$2.40 or \$2.35. So they put their peaches away --





they put them aside. They do not buy any more from the wholesaler. They do not want to be shown up.

And therefore the producer in British Columbia will suffer. Out there they have their central selling organization and they are anxious to dispose of their peaches. They push the sale of their fruit. They have their own sales agencies -- and I am not making up this story; these are facts. This is a good example of what happens.

The producer sits out there with a lot of peaches to sell. The consumer here knows that peaches were offered very boldly in an ad in a certain week at \$1.89. Therefore, to her, that is a fair price for peaches. Because, no matter what price a merchant charges, so far as the average consumer is concerned, he is still making a lot of money. And I do not blame the consumer for feeling that way; it is natural that she would.

So, as I say, the consumers have seen this price of \$1.89. Therefore every housewife wants to have peaches at that price. Every housewife wants to preserve peaches; but in this case she waits. These peaches were on in one store over a week end. But, next day she sees that they are priced at \$2.35 or \$2.40. She says, "Well, I have seen them at \$1.89. I am going to wait." The result is that the food retailers, generally, who should be putting their efforts into the sale of peaches in order to move the crop that has been grown out in British Columbia, are not interested in selling peaches at



all. I have seen that happen during a season. With one cut price it affected the sale of that product in the way I have described. And what has been gained?

MR. GERIN-IAJOIE: Do you mean that the peaches did not sell after that?

MR. SHELLY: Absolutely; because the retailers have no interest in selling peaches under those circumstances. There would be no use trying to sell them at \$2.35 or \$2.40 -- which was away above the \$1.89 at which they were sold. And you can still see that ad. Those ads were in the papers in big bold letters. The consumers think they are smart and they will wait until they can buy at \$1.89.

And so the result is that, before the consumer knows it, the season is over and they have not put up their peaches. Then, the producer, at the other end of the line has not sold his peaches. He could not sell them. We have seen this sort of thing happen again and again.

Let me read something from this green book -- and this is not a retailer speaking. It comes from the provincial farm produce growers association. Dealing with the pre-war period, they say:

When the loss leader was in common use in grocery stores the practice was to pretty well confine it to those things dominating the average table and thus we found greater use of the farm



products as differentiated from dry groceries as the item invariably used. And that is as far as Mr. MacDonald went. Then there is this further paragraph:

Before the war butter and fresh fruits and vegetables were the favourite items used in loss-leader sales. Butter was sold continually at or below laid-in cost as were many of our fruits and vegetables.

Today the government is losing the money, because they are subsidizing butter.

That is the sort of thing I have been talking about here as a retailer. I am sorry we have not some people here from the British Columbia tree fruit board. The stories they could tell you about how these things work, and all the harm it does to the growers, would be most interesting, I am sure.

So what I am coming back to is this matter of confusion, because that is all it is. This type of loss leader selling causes confusion in the minds of the consumers.

MR. GERIN-LAJOIE: Do you not think that from time to time the consumers know that the retailers wish to sell these stocks at cost price, and get rid of them?

MR. SHELLEY: Yes.

MR. GERIN-LAJOIE: And have clearance sales?

MR. SHELLEY: Yes, but that is an entirely different thing. As I said a little while ago, if I



find myself with 200 cases of peaches, which would not be any good on Monday, I would put a sign on them saying "To clear" -- and that explains the situation to my customers when they buy them. They know about it. But unless it is indicated in this way they do not know about it.

THE CHAIRMAN: All these people would have to do would be to say, "To clear, \$1.89"?

MR. SHELLEY: Yes, but that would not be honest.

THE CHAIRMAN: You say it is deceptive, anyway. It might be a little more dishonest, but possibly there would not be the confusion.

MR. FAVREAU: It would be less unfair.

MR. SHELLEY: It is all right to say that; but, in practice, you never find the thousands of retailers we have in Canada doing that sort of thing.

THE CHAIRMAN: But if one of them got in a shipment for the purpose of making a spread with it and advertised those peaches at \$1.89 -- "Big shipment, just received, to clear, \$1.89" -- would that cause confusion in the minds of the public? It would be actual loss leadering.

MR. SHELLEY: It depends upon the circumstances.

THE CHAIRMAN: If they cost \$2 a case to get them in, and they were being offered at \$1.89 to get people into the store, it would be loss leadering, would it not? And if he said, "To clear", would





that remove from the minds of the public the idea that the price ought to be more than \$1.89 -- by merely saying that it was "to clear"?

MR. SHELLY: Well, I would say it would depend entirely upon the circumstances. I think, with a big shipment of fruit coming in, and if it is good fruit, and I mark it "to clear", there is no indication that they are distress peaches. Anybody can see that. They are not on the verge of having to be put up today. It has to be honest. Consumers can tell that sort of thing.

And that is why I gave this other example with respect to regular merchandise. Somebody just had a notion that he would be smart and get a lot of people into his store for the week end, and he would use that as a leader. And he did get people into his store, there is no doubt about that; but look at the consequences.

MR. FAVREAU: What about the dealer who had lots of peaches, honestly, but who did not advertise them at \$1.89 and did not indicate that they were "to clear"; would that be deceptive?

MR. SHELLY: That is exactly where this does harm, yes.

THE CHAIRMAN: And, whether he has brought them in for the purpose of putting on a special loss leader, or whether he has a supply in, in the ordinary way, which he thought he would be able to sell but which, subsequently, he found he had to get rid of -- in either case, there would be confusion.



MR. SHELLY: What happens, generally speaking, in practice is this -- and I believe this is common to almost any distribution centre in Saskatoon, and I believe Saskatoon is a typical distribution centre. We have here half a dozen different wholesale houses handling this type of thing. Let us say that one of them, through bad management, or whatever it may be, or bad judgment becomes badly oversupplied on a particular item. Let us take peaches, again.

There is nothing wrong with the quality and, provided we can sell them within a normal period of time they will be O.K. Well, instead of him upsetting the whole market, what happens in practice is that he will phone around and he will tell the other houses, "I made a mistake on peaches; I am overbought. Can you help me out?" Some of them may be on the verge of ordering more cars. So, instead of ordering extra cars they will say, "Sure, I will help you out." Somebody else will take 250, and so on -- and so the situation is kept clean. That is what happens in practice.

But if the product is overripe, there is nothing you can do about it; you just have to get rid of it.

MR. GERIN-LAJOLIE: How do you determine good faith in these transactions? The Chairman has just made reference to this point; supposing a retailer buys a whole lot of peaches, just to make a special of it, and proposes to sell them under his



cost price. He puts on a clearance sale, perhaps on the first day that he gets them.

MR. SHELLY: Under this formula, all that would happen is that if that price happened to be such that it would be to their advantage to buy their peaches from that retailer instead of buying from their wholesaler, that is what the other retailers are going to do.

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THE CHAIRMAN: That is what they would do?

MR. SHELLY: Yes; but it still leaves every operator free, legally, to sell at any price he likes.

MR. GERIN-LAJOIE: And if it is really a bona fide clearance sale, do you not think it would penalize the retailer if he is obliged to sell 25 per cent of his stock to one retailer and 25 per cent to another retailer?

MR. SHELLY: No, I would not say it is a hardship on him at all. I say that if it is a bona fide clearance he would be happy to get rid of it.

MR. GERIN-LAJOIE: But he is obliged to give a discount.

MR. SHELLY: Yes, but by giving that discount he gets rid of them that much more quickly. Otherwise he might have to cut that price once again before he sells the last of what he has on hand. Whereas, if the other retailers come and spread the load, by relieving him of 25 per cent of his stock ---

THE CHAIRMAN: Perhaps he might not cut



it quite as much.

MR. SHELLY: Yes, true. But the law of economics will govern there.

THE CHAIRMAN: He might dispose of some of it to other dealers whereas, if he was not operating in that way, he would have to sell it to the public.

MR. SHELLY: Yes, there would be no hardship. Most retailers are not interested in buying dead stock from other retailers. The rate of discount is so inconsequential that it is of no importance, from that standpoint.

THE CHAIRMAN: Sometimes you get canned goods as clearances, too, do you not -- canned tomatoes, for instance? Does that not happen when you get on towards the time when the new crop is coming in?

MR. SHELLY: No, because they can be carried over another twelve months, quite easily.

THE CHAIRMAN: Do they not deteriorate at all?

MR. SHELLY: No; the only thing there is that if the new pack is on the horizon and the indications are that the price will be lower than it was for the old pack, then the retailers will cut the price. They may expect that the price will be down 50 cents a case; so, before the new pack comes in on the market they will have a sale on the basis of giving the consumer 25 cents a case off instead of the 50 cents a case which they expect -- or





something in that ratio. And in that way they will ease their loss. But, from the standpoint of carrying over into another season, there is no problem there at all.

THE CHAIRMAN: There is no depreciation?

MR. SHELLY: No.

THE CHAIRMAN: And there is no deterioration?

MR. SHELLY: No. I might say that on canned cherries there is some deterioration. There is quite a lot of acid content in cherries, and they blow. That does not mean that in twelve months they will be gone; but maybe in eighteen months you will have trouble with them.

MR. GERIN-IAJOIE: I have one question to ask about premiums. Let us suppose that a store offers a premium for any purchase of \$3 or over.

MR. SHELLY: Yes.

MR. GERIN-IAJOIE: Now, supposing the neighbouring retailer comes in and wishes to buy \$300 worth; he would only get one premium?

MR. SHELLY: No, it would go for every \$3.

MR. GERIN-IAJOIE: But if that is not the offer, if the offer is for any purchase of \$3 or over ---

MR. SHELLY: Yes; in practice, any stuff you see put out by a retailer you would go into that store and buy \$6 worth and he would give you two premiums. That is always the practice. You buy \$6 worth of goods and you get two premiums. You



buy \$9 worth and they give you three premiums. If they did not do that, well they would be in trouble with the consumers.

MR. GERIN-LAJOIE: I am not sure about that.

MR. SHELLY: Yes, sure; that is regular practice.

THE CHAIRMAN: You mean that the consumer would object.

MR. GERIN-LAJOIE: At Steinberg's in Montreal they offer a premium for any purchase of \$7 or over. It may be \$10 or \$12, but there would be only one premium.

THE CHAIRMAN: But if they bought \$14 worth they would be entitled to two premiums.

MR. SHELLY: If this is translated into law, we would have to have that interpretation in there -- that it means, in a case like that, that it has to apply to every \$3 worth. That is easily expressed, I think.

THE CHAIRMAN: That is the intention you have, anyway?

MR. SHELLY: Yes; and that is in conformity with normal trade practice.

THE CHAIRMAN: And that is the intention you have?

MR. SHELLY: Yes, definitely. Otherwise it would be a wide-open invitation to circumvention.

MR. GERIN-LAJOIE: Is it possible that trade practice to which you have referred would



vary from place to place and from region to region?

MR. SHELLY: It could; but I doubt very much if it does, because I think the consumer would take care of that.

--- Luncheon adjournment.



--- Upon resuming at 2.30 p.m.

THE CHAIRMAN: The hearing will resume.

MR. GERIN-LAJOIE: Mr. Shelly, I should like to have you clarify if possible the enforcement procedure you would envisage for the whole formula proposed in your brief. You seem to consider some type of enforcement, in paragraph 14, where you refer to indemnity in case of non-conformance. That is the only enforcement you envisage?

MR. SHELLY: That is right.

MR. GERIN-LAJOIE: And how would that indemnity be enforced?

MR. SHELLY: Well, I made some comment on that earlier. The fact that I had not studied it from the legal angle -- I do not know just what is involved procedurewise. But when you say, what do I envisage, I tell you what I would hope to envisage, and that is to have it as simple as possible so that a man against whom default is made would be able to come and collect double that discount that he otherwise would have had. Just what the legal process may be to give effect to that, I cannot say.

MR. GERIN-LAJOIE: Supposing the first price cutter or retailer does not wish to pay the indemnity, I suppose some enforcement board or some tribunal would be necessary?

MR. SHELLY: I suppose so.

MR. GERIN-LAJOIE: Would you envisage procedure before the ordinary courts of law, or before a





special board; or have you any thought about that, at all?

MR. SHELLY: I think that is something for study by the government, to devise something that is practical and effective, and as simple as possible.

MR. GERIN-LAJOIE: But you have not any suggestion to make?

MR. SHELLY: No, I have not studied that aspect of it.

MR. FAVREAU: Simple, practical and constitutional.

MR. SHELLY: That is right.

MR. FAVREAU: I was wondering whether in forcing a retailer to resell some of his merchandise to the extent of \$300, for instance, at a price which would be either 5 per cent or 10 per cent below his normal resale price to the consumer -- I was wondering whether in so doing you would not, in many cases, in fact, force the retailer to take an actual loss, taking into consideration his normal cost of doing business.

And here is my view of that -- and I offer it as part of the question -- that if you take for granted that the average cost of doing business on butter, fluid milk, margarine, lard and so on, is 5 per cent and one retailer sells at 8 per cent, you would expect that he would make a net profit of 3 per cent?

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MR. SHELLY: Yes.

MR. FAVREAU: If he is obliged to sell



this merchandise to the extent of \$300 at 5 per cent less than the price at which he puts it on sale, then this will give him a gross profit of only 3 per cent, thus forcing him to lose actually 2 per cent on that sale.

MR. SHELLY: Mr. Commissioner, there would be no loss at all in that case, because, as the formula says, the retailer has the right to direct this buying retailer to the wholesale supplier.

MR. FAVREAU: Yes, I am coming to that point. But, to test the formula you would have to place yourself in the most drastic situation. These are not objections I am offering; but if we have to recommend some kind of formula then we will have to know that it can go through all possible tests. I think we have to take for granted that a manufacturer or wholesaler will not be obliged either to ship to or to sell to that particular retailer, because he can choose his own customers.

MR. SHELLY: No, but the wholesaler or the manufacturer concerned would not be selling to that buying retailer. He would be selling to the selling retailer.

MR. FAVREAU: And if he were to refuse to sell any more ---

MR. SHELLY: And the selling retailer has already had payment for it. Because it is not a legal order -- it is not an order that he has to accept from that retailer unless it has been accompanied by the payment.



So the selling retailer already has that cash. He simply conveys the order to his normal supplier, whose business it is to sell that merchandise and who ostensibly makes a profit from selling it.

MR. FAVREAU: Then, this would merely create an obligation on the part of that selling retailer to obtain in favour of the buying retailer the facilities of supplying to the extent of \$300?

MR. SHELLEY: Yes.

MR. FAVREAU: And that is all?

MR. SHELLEY: Yes.

MR. FAVREAU: And should it prove either very difficult or impossible for the so-called selling retailer so to get supplies available for the buying retailer, then he would be faced with no obligation?

MR. SHELLEY: If that was the fact, that is true.

MR. FAVREAU: Am I right in that?

MR. SHELLEY: If that is the fact. You cannot expect the impossible. A thing like that could happen. It would be very rare that it would happen, but it could.

MR. FAVREAU: And with this formula never would a selling retailer be forced to resell any portion of his actual stock on hand to a buying retailer.

MR. SHELLEY: Yes, that is right.

THE CHAIRMAN: Would you make clearer for us what you have in mind by certain terms that are



used in your brief repeatedly. The first of these is "loss leader" and the second is "deceptive pricing". I would like to have as clear as I can what you have in mind. Because loss leadering has been defined for us in several different ways. You gave us a statement from the American law of these special statutes, where there is a certain minimum markup. But what we would like to get is what you have in mind, yourself, when you are talking about loss leaders. We want to be sure that we understand what you mean when you talk about them.

MR. SHELLY: There are different effects of deception, different categories of deception, and I would like to mention a few of them.

For instance, I was talking to a consumer not long ago and he brought up this subject. He was speaking about meat, a certain cut of meat, and he said, "I was in a certain store" -- and it was a large store. He saw that meat priced at 69 cents a pound. He knew that the going price in certain other stores in that same city had been 53 cents a pound for that very same meat. So he said to this merchant, "How come, your price is 69 cents, and everybody knows that the going price is 53 cents?" This was a big operator he was talking to. And the reply was, "If those other fellows want to go broke that is up to them."

Now, that was a consumer, and I think it demonstrates the point that, to a consumer, that situation was deceptive. The other operator was





charging 69 cents at that time and was obtaining just barely -- I repeat, just barely -- a nominal margin on that item.

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It so happened that I was in Toronto a few days before that. You are all familiar with the Loblaw stores. The Loblaw price on that same meat at that time was 75 cents a pound. I was in another store in St. Catharines, a good, new, sizable food market. And that chap was getting 72 cents a pound for that meat. And here in Saskatoon, a large operator of repute was getting 69 cents -- which, to a consumer here, looked like a ridiculously high price. And in Toronto the consumers were thinking nothing -- or in St. Catharines -- of paying 72 cents or 75 cents in the very organizations that have the reputation of being the lowest priced people and the most efficient people in Canada.

So I am just giving you that as an illustration of the kind of deceptive effect it has on a consumer when you have that kind of situation.

THE CHAIRMAN: Do you know whether it is normal for the price of meat to be somewhat higher in the east than it is in the west?

MR. SHELLEY: Just a mere trifle, a small amount, perhaps two or three cents a pound. Most of the meat comes from here and there is the matter of transportation. But it is only a trifle. So there you have one type of deceptive effect. Maybe I should not call this 53 cent price that was in effect here -- maybe I should not call it that. I



have not wanted to say what is a loss leader, and I do not want to say, because that is just a matter of opinion for everybody concerned.

THE CHAIRMAN: Perhaps we can get at that a little more closely. You are explaining what you mean by deceptive pricing.

MR. SHELLY: Yes, deceptive effect.

THE CHAIRMAN: And you wanted to get away from speaking of it as a loss leader. If a big operator in the west is charging 69 cents, and others are charging 53 cents, then it seems to me that one of two things is fairly clear, either that the 69 cents provides for a large margin of profit, or the 53 cents does not have any.

MR. SHELLY: I have just made the remark that that 69 cents does provide just the bare minimum of normal margin.

THE CHAIRMAN: Then the 53 cents would be a substantial loss.

MR. SHELLY: You can arrive at your own conclusions as to the 53 cents -- as to what that represents.

THE CHAIRMAN: It would be selling at a loss, whether it was a loss leader or not.

MR. SHELLY: That is right. So there you have that deceptive situation. Here was a consumer --

MR. FAVREAU: Why would they do it? Would it be to bring in customers?

MR. SHELLY: I am not going to answer that



one. I do not know.

THE CHAIRMAN: Strictly speaking, I have always looked at loss leading as having the word "leading" in there for a purpose.

MR. SHELLY: Yes.

THE CHAIRMAN: And that purpose is, normally, to lead people into a store.

MR. SHELLY: Yes, that is right.

THE CHAIRMAN: To buy something -- whether it is to buy other things at a higher margin of profit or merely to get them into the store so that they will buy something.

MR. SHELLY: Yes. And I think I should say, too, that that price of 53 cents was not just for one day or two days or one week or two weeks. It was for quite a long period of time. And every other cut of meat, of that form of meat, was in the same proportion.

And that is why just before the adjournment for lunch I made it a point here to say that there are two types, two general types, of loss leader selling. One has the short-term effect and the other has the long-term. I believe I explained those earlier. So that is one type.

THE CHAIRMAN: That is one of the things you mean by deceptive pricing.

MR. SHELLY: Yes. It is deceptive in this way, that it places the merchant who sells on even just a bare margin, so that he probably barely makes enough to break even -- it places him in a



position of being a highway robber in the eyes of the public.

THE CHAIRMAN: But who is deceived, actually, by that practice? I am trying to get the meaning of the term.

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MR. SHELLEY: I think I have to say that you can look<sup>at</sup>/it on the short-term basis or on the long-term basis. If a situation like that lasts long enough certainly the consumer is deceived in the end.

THE CHAIRMAN: Well, if the consumer continues for a long period to get that meat at 53 cents instead of 69 cents or 72 cents, maybe he enjoys being deceived.

MR. SHELLEY: That is right. But I mean -- and I do not think I made myself clear -- if a situation like that runs long enough there are not going to be many competitors left. I mean it in that sense. So that, then, in the end the consumer has been deceived. And in the meantime he has been deceived in another way. It is this -- and maybe this might not be harmful to the consumer, but it is certainly confusing to the consumer, that the consumer has been certainly of the impression that certain stores charge away more than they should charge. It puts them in the wrong light.

I am speaking of the long-term view, the thing that has continued for some time. On the other side of it I have mentioned, this forenoon, the type of thing where we have the hit-and-run type of loss





leader, which has the effect of affecting very much the future sale of that product, to the detriment of the producer. That is one type.

Another type of deception through loss leader selling is where the seller quite knowingly, knowing that he has only a very limited supply of this particular item on hand or available, makes a big splash with it and brings people into his store. When it is gone, it is gone. But the people are there; and while they are there they are buying other things.

There is an element of deception there, too. The people are there in the hope of being able to buy that particular item, and a few of them succeed; but there is the element of deception.

THE CHAIRMAN: I can see there is an element of deception, where there is advertising of goods for sale in such a manner as you indicate that the dealer has a fairly liberal supply, whereas in fact he has only a very small number, and people go into the store for the purpose of getting it, when it becomes perfectly clear that only a very few of them can ever hope to get it. There is an element of deception there, so far as the buying public is concerned.

MR. SHELLY: Yes.

THE CHAIRMAN: But if he has an adequate supply to meet the demand of those who come in, they are not really deceived, are they?

MR. SHELLY: That is right. I meant it in



Mr. Shelly

that sense, that is, in the sense of not having an adequate supply to meet the requirements of the people who would be brought in.

MR. FAVREAU: We are told that some dealers, particularly in connection with appliances, who wished to act in good faith would advertise an item at a great reduction, and they would say, in characters which you could read quite easily, "Three only", or "Five only", thus indicating that they are clearing them out.

MR. SHELLEY: That is legitimate.

THE CHAIRMAN: Also it has been made clear that the purpose of that is to get people into the store.

MR. SHELLEY: That is right. And another thing is that, of course, extensive loss leader selling does produce certain pressures. If there gets to be a lot of it, and a man wishes to remain in business, certain things happen that normally would not happen. For example, you might find that even the very store that advertises at that loss leader price may have that item on display in that store in two different places at two different prices.

So long as you get the people in there, a certain percentage of them will pick up the item from the pile where it is marked at a higher price. And I am not talking about anything imaginery, gentlemen; this is happening.

MR. FAVREAU: I am just recalling my personal



experience; it might have happened to me.

THE CHAIRMAN: Are you not likely to pick it off the pile that has the higher price and move it to the other pile?

MR. SHELLY: Each pile is marked. And then there is the matter of quality mixing. Meat lends itself to that, different grades of meat.

THE CHAIRMAN: And, just coming back to that meat question, where there is a difference in price there can be a difference in quality.

MR. SHELLY: Yes. One can advertise a certain grade of meat at a certain price, for a certain cut, and have it on hand, too, have it on display; but he can also mix in a cheaper grade and advertise it and the advertising would be partially correct.

THE CHAIRMAN: It is deceptive if the goods sold are not as advertised.

MR. SHELLY: Yes, it is deceptive.

THE CHAIRMAN: There is no question about it.

MR. SHELLY: Another thing which is deceptive about it -- and I am again talking about meat -- is that, by and large, people are accustomed to certain trim, a certain standard of trim. Loss leader selling, again, has a tendency to encourage deceptive trim. True, in the ads it looks just like the normal thing that a consumer always buys. But when they get into that store they find the trim is not what they are accustomed to. However, when they



are there they are going to do some buying.

THE CHAIRMAN: A little more bone or a little more fat.

MR. SHELLY: Yes, but it is deceptive. I say it is deceptive. And we are now talking about the different angles of deception, and there is an endless number of them. I have just noted a few of them.

THE CHAIRMAN: Some of them are almost impossible to prove.

MR. SHELLY: Yes, that is quite true. But that is why I feel so strongly that this formula which we have presented to you is so automatic in its application that it automatically seeks out the things that are not right and puts a penalty where it should be put. And it does not concern itself about anything where there is no problem. It is very automatic in that respect.

Another thing -- and this may be somewhat off the subject -- before we began the hearing this afternoon a newspaper reporter asked me a question in which he pointed out that he was puzzled about what is a loss leader. So I said to him --

THE CHAIRMAN: We are puzzled, too, but not merely from what we have heard here this morning.

MR. SHELLY: I am glad that was brought up, because it just brought this to my mind. If we get this formula going I think I can say that so far as the food field is concerned there is no loss leader. We will have no occasion for anybody to speak of





loss leader, or to be concerned with loss leaders, and we do not need any definition of loss leaders because there will not be any loss leaders.

So far as the retailer is concerned, there will be no loss leaders because he is always in a position where he can step in and he has access to supply on a basis which at least gets him perhaps half of the margin which he otherwise would have.

MR. FAVREAU: You do not have to ask yourself whether he is loss leadering or not.

MR. SHELLEY: That is right, yes.

MR. FAVREAU: You can always place yourself on his level.

MR. SHELLEY: We are not interested in that. We no longer have any interest in loss leadering. We are not concerned with it.

THE CHAIRMAN: You have a somewhat similar result as a prohibition on the selling of food products at a lower price than one which would show a markup of less than 5 or 10 per cent, according to the category of the goods. Because if they do that they will be called to book by other retailers who could compel them to sell at 5 per cent or 10 per cent less than that. In other words, they would have to sell to the other retail at below their actual purchase price, themselves. It would produce the same effect.

MR. SHELLEY: Yes.

THE CHAIRMAN: But not by any compulsory rule of law enforced through the courts.



MR. SHELLY: That is right.

THE CHAIRMAN: But by -- that is, if it works -- automatic self-policing.

MR. SHELLY: Self-policing, yes. Again, it does away with all complications of attempting to prove at any given time what the cost is in the case of this merchant, or of that merchant across the street. And they may have different costs, quite legitimately.

THE CHAIRMAN: The total effect, so far as the consumer is concerned, would be that there would never be any food products offered for sale, apart from distress selling or clearances, at less than 5 per cent or 10 per cent above the cost to the dealer; that is what it would amount to?

72)

MR. SHELLY: Yes.

THE CHAIRMAN: In effect that would be what you regard as loss leadering; and it would prevent loss leadering?

MR. SHELLY: Yes, all bait pricing, all lures. It lends itself to and generates deceptive things of one kind or another. That is what we are aiming at.

THE CHAIRMAN: But do you feel that at the present time there are many instances, or that the practice is prevalent, for a retailer to sell food products at a price which is actually less than the invoiced price to him?

MR. SHELLY: In the food field?

THE CHAIRMAN: Yes.



MR. SHELLY: It is fairly prevalent.

THE CHAIRMAN: In most of the other places -- in some of the other fields -- we have been told that there is not much of that, but that there is a great deal of selling at such a small markup that they feel there must be an over-all loss.

MR. SHELLY: Yes.

THE CHAIRMAN: But in many cases -- I should say that there do not seem to be many cases of sales at prices which are actually below the price to the dealer.

MR. SHELLY: Yes. And there is one other deceptive feature about which I have a note, one other deceptive practice. I just came across this a few days ago. A friend of mine in another city sent me a four-page advertisement of a certain retailer in which two pages were devoted to the advertising of forty-one items most of which were priced in multiples, that is, two for so much or three for so much or four for so much, depending upon the item.

Another page was devoted to explaining -- and this was really Santa Claus now -- that the money-man was going to call around at the door of the consumer with shining new 25-cent pieces, and that for every item found, either a part package or a part can, or what have you -- or whole -- in the home, for every item a shining new quarter would be paid for it.

Now, I say that there are two deceptive



things about that. For one thing, no one has any knowledge of how many quarters are going to be given out. The other thing is that this explanation said that for every item found in the home 25 cents would be paid. I am sure they mean -- and what they carried through on -- would be that every commodity, no matter how many cans you had of it on hand, would be considered an item. But the way the pricing was done was with the idea of loading the consumer with a lot of merchandise. It was priced in multiples, with the idea of selling a lot of it. And undoubtedly, the consumer in going to those stores was loaded up, and undoubtedly he bought heavily in the hope that when the money-man did arrive every can of corn, which may have cost 13 cents, would bring a shining quarter back. So there is deception there.

THE CHAIRMAN: The money-man did not go everywhere, did he?

MR. SHELLEY: I do not know; I have not heard.

THE CHAIRMAN: I think he would lose quite a lot if he did.

MR. SHELLEY: And, by the way, in that particular province where this came from, they have a loss leader law. The way that loss leader law was circumvented in this case was by merely putting the words at the bottom of the ad, "Manufacturer's offer". And these were all private brands.

This provides me with the opportunity of





73 saying right now that if you should go ahead with something like this and leave out the provision here that we call for, that it should include private brands, that we would just as soon not have it at all. Because it is becoming more and more a situation where private brands are going to be the bugbear of loss leader selling.

THE CHAIRMAN: Speaking of private brands in that connection, on some occasions people who have private brands are anxious to keep the standard nationally advertised brands at the regular fixed price and see that the prices on those things are not cut, because they can sell their private brands more readily than others. Whereas if standard nationally advertised brands were cut, their private brands would have no advantage in price and therefore they would be more difficult to sell.

MR. SHELLEY: However, the way this formula would work, it takes care of private brands as nicely as any others, so far as any genuine loss leader sale is concerned.

THE CHAIRMAN: Have you completed your consideration of the question of what you mean by a loss leader? I understand you are not being dogmatic as to just exactly where you draw the line.

MR. SHELLEY: We do not have to be, with this approach.

THE CHAIRMAN: I know. With your formula you do not. But, as to drawing the line between what would be regarded as a genuine loss leader



and what might be just a safe margin, I understand you are not concerned with that and you do not wish to be too specific about it.

MR. SHELLY: That is right.

THE CHAIRMAN: So far as deceptive pricing is concerned, you have given us two or three examples. It is not a definition, but it is an indication.

MR. SHELLY: Yes, just samples.

THE CHAIRMAN: I was going to ask about your reference to private brands, the proposal you put forward on page 3 about private brands. Is a private brand owner necessarily going to be a loser by putting your formula into effect?

MR. SHELLY: No.

THE CHAIRMAN: Might he not gain?

MR. SHELLY: He might gain, yes.

THE CHAIRMAN: The owner of the private brand normally handles it himself.

MR. SHELLY: Yes.

THE CHAIRMAN: But if all sorts of dealers come and demand that he turn over a number of items of his private brand to them, will that not increase his sales as a private brand owner?

MR. SHELLY: It helps to popularize the private brand.

THE CHAIRMAN: It seems to me there might be, in many instances, no reason for his kicking at all.

MR. SHELLY: That is right. I know that



by-product is there; but we do not mind that. We are concerned with the problem of this formula and we believe the formula will overcome the problem. If, incidentally, we help him in other ways, we will be glad to do so.

THE CHAIRMAN: Then, there is another question -- and I probably know the answer, but I wish to be quite sure about it. Would the formula apply within any particular geographical area?

MR. SHELLEY: No, the time factor would take care of that.

THE CHAIRMAN: And the freight factor?

MR. SHELLEY: Yes, time and freight.

THE CHAIRMAN: A dealer, for instance, in Penticton would not write to somebody in Saskatoon.

MR. SHELLEY: Freight and time limitations take care of that. So that it is very simple from the standpoint of translating it into law.

THE CHAIRMAN: It would pretty well automatically take care of any problem of that kind.

MR. SHELLEY: Yes.

THE CHAIRMAN: One other small question. I am thinking of a small operator who might take a little flyer and might price one article fairly low. If a number of retailers then required him to supply them with \$300 worth of that item, would that possibly be a burden upon him, an unreasonable burden?

MR. SHELLEY: Well, he writes his own ticket. He does not have to put himself in that position. I think that is the best answer to that. This formula



does not endanger him in any shape or form. It puts him in a better position than he ever has been before. And if he wishes to be an offender by way of engaging in deceptive practices or loss leading selling, well, he is writing his own ticket. He knows what he is doing.

THE CHAIRMAN: We must not get away from the fact that small dealers as well as big ones sometimes do this sort of thing.

MR. SHELLY: That is true.

THE CHAIRMAN: The little fellow could very quickly be put out of business upon the application of the formula.

MR. SHELLY: Yes.

THE CHAIRMAN: Whereas the big fellow would not be put out of business so easily.

MR. SHELLY: That is right.

THE CHAIRMAN: The little fellow would have to be more careful.

MR. SHELLY: That is right.

THE CHAIRMAN: Because it might bankrupt him very easily.

MR. SHELLY: Yes. But I am sure Mr. Rands has given that very full consideration, and the association also; and they are not afraid of that angle at all.

THE CHAIRMAN: With regard to the reference to bona fide clearance items at page 5 of your brief, this question was raised this morning to some extent. You speak about its being conspicuously





marked as a clearing item. The question sticking in my mind is this: what guarantee would there be of the bona fide of the marking?

MR. SHELLY: I might just as well have left that word out. It does not matter. So long as the item is marked "clearing item" -- although the intent is that it should be a bona fide clearing item. But even if it were not, supposing there is a marginal case, and one fellow says it is not a bona fide clearing item while the other fellow says it is. What would happen in those circumstances?

Well, the only thing that would happen would be that in those circumstances the buying retailer automatically has access to 25 per cent of the goods he has on hand of that item -- right then and there -- less the discount. This waives the \$300 clause.

THE CHAIRMAN: If it is just marked for clearance the formula does not apply in its full sense.

MR. SHELLY: Yes.

THE CHAIRMAN: In the drafting of it in legal form you might have to say, "Goods which are bona fide clearance items clearly marked or advertised as such."

MR. SHELLY: That is right.

THE CHAIRMAN: Otherwise the door would be pretty well open to cut down the effect.

MR. SHELLY: Oh, yes.

THE CHAIRMAN: And here is a fairly



theoretical question: during the last twenty-five or thirty years the average markup in the retail food business has been reduced considerably.

MR. SHELLY: Yes.

THE CHAIRMAN: Would you anticipate any possibility of that product being reduced very much further, through improved methods of merchandising?

MR. SHELLY: The general price level has quite a bit to do with that. The price of goods is quite a bit higher than it was pre-war. The cost of doing business in terms of percentages has not gone up as high as the price of merchandise. And that has been helpful -- plus increased efficiency. And certainly food stores are much more efficient today than they were before the war. And there is lots of scope yet for further improvement.

THE CHAIRMAN: If you take the D.B.S. and other records I think you will find they indicate that the average markup of independent retail stores or chain stores have shown a reduction, perhaps not every year, but it has been progressively down.

MR. SHELLY: Yes.

THE CHAIRMAN: If it went down much farther in some cases it might get below that 10 per cent.

MR. SHELLY: Yes. Well, the time could come where there might be occasion for some revision in this schedule. Incidentally, that question was raised by Dr. Timlin who, I am glad to see, is here today. That question was raised in the discussion we had a couple of weeks ago. My suggestion on that



was that perhaps there should be some sort of advisory committee on which consumers would be represented and the trade would be represented, and that the committee would serve in an advisory capacity on any amendments which might be required from time to time.

I do not see much occasion for amendments, however. But we do know that through the years changes do take place.

THE CHAIRMAN: Your idea of five and 10 is that that is a suggested figure which you think is suitable for the present state of business.

MR. SHELLEY: Yes.

THE CHAIRMAN: It might require some modification at some future date.

MR. SHELLEY: Yes.

THE CHAIRMAN: When conditions vary enough to warrant it?

MR. SHELLEY: Yes.

THE CHAIRMAN: I was interested in the discussion about meats this morning, the way it would operate with regard to meats. Perhaps you could go a little farther on that subject. Let us suppose that a butcher buys a carcass of beef at 30 cents a pound. He markets various cuts at all sorts of prices. I do not know this -- perhaps you can tell us -- but would any of those portions of the carcass be sold at less than 30 cents a pound, in a retail store?

MR. SHELLEY: Yes.



THE CHAIRMAN: Some would be?

MR. SHELLY: Yes.

THE CHAIRMAN: And others would be perhaps up to 60 or 80 cents, depending upon what they were worth?

75) MR. SHELLY: Yes.

THE CHAIRMAN: Supposing some portion was sold regularly by this particular butcher at 20 cents a pound; what would the competing retailer be entitled to ask him for?

MR. SHELLY: Well, he would be entitled to ask for \$300 worth of that particular cut.

THE CHAIRMAN: He would have a sweet chance of getting it, would he not? \$300 worth of one cut would require quite a few animals to be carved up.

MR. SHELLY: Yes. But, you see, this thing gives equal rights to everybody. And it is not going to be used just for the fun of it, so to speak.

THE CHAIRMAN: But it might be used to put great pressure on a man who has cut a price, a man who perhaps is not very popular. It might be used as a punitive weapon against him in a drastic fashion.

MR. SHELLY: Yes; but that same man could turn around and buy from other retailers in the same way. So it is self-compensating. I gave that particular angle a lot of thought, I might say.

THE CHAIRMAN: In this particular instance, \$300 worth of that one one cut -- let us suppose





that a dozen retailers wanted to get this one man out of the way, if he was a very unpopular man because of his behaviour. They might want to get rid of him and they would just say, "Well, let us go to work on him." They could order \$300 of that particular cut.

MR. SHELLY: His defence is that he can do the same thing with the others.

MR. FAVREAU: Or that there is no real possibility to replenish.

MR. SHELLY: There is the time element involved. But if you do not put that interpretation upon it in the case of meat then we have nothing left. I think it is the only approach we can use.

THE CHAIRMAN: In meat you would have to apply to each particular cut.

MR. SHELLY: Yes.

THE CHAIRMAN: It seems to me when you buy up a carcass it might be pretty awkward.

MR. SHELLY: Yes, it might be. But I do not think we have anticipated any problem on that. I would ask Mr. Grant if we have.

MR. GRANT: I do not think so, no.

THE CHAIRMAN: The butcher buys by the carcass, as a rule, does he not?

MR. SHELLY: He can buy in other ways, too, if he wishes.

THE CHAIRMAN: But he does not ordinarily buy so many joints, does he?

MR. SHELLY: The little fellow does.



THE CHAIRMAN: Yes, but a butcher of any size does not ordinarily buy so many pounds of rib roast and so many pounds of brisket, and so on, does he? He gets a carcass and he cuts it up himself because, as a matter of fact, he has a margin to work on.

MR. SHELLY: Yes, that is right.

THE CHAIRMAN: And it seems to me that if that is the regular practice, there might be a bit of a problem where there is only one cut of meat that is reduced to a point where other dealers would want to get it from him.

MR. SHELLY: Yes.

THE CHAIRMAN: And there might be a practical problem in that connection. If they wanted to they could put pressure on him and make it pretty awkward for him, so that perhaps it would be more drastic than a legal penalty.

MR. FAVREAU: It might be more logical to allow them to buy a whole carcass to the extent of \$300 at the average price, so that the whole thing is sold to the consumer at less than 10 per cent.

MR. SHELLY: I do not think it would meet the practical problem. I was thinking that, as an option on meats perhaps one could provide an option whereby this would be one way, but the selling retailer would have the option, instead of supplying that quantity of meat, to pay double the discount that otherwise would have applied on that sale.

MR. FAVREAU: Or could he have the



opportunity to offer the whole carcass at the average price at which he sells to the consumer?

MR. SHELLY: I do not think that would meet the practical problem, the thing we are concerned about here, this loss leader device.

MR. FAVREAU: It strikes me that the other aspect raised a practical difficulty.

MR. SHELLY: What about the option, as an out?

MR. FAVREAU: He will be punished for having sold part of the carcass at a price which was not abnormal. That is the point.

MR. SHELLY: If it was not abnormal there would be no demand made on him.

MR. FAVREAU: Yes, because it would prevent the other retailer from having to buy the whole carcass.

MR. SHELLY: Oh well, the smaller man does buy from the packing plant.

MR. FAVREAU: He can?

MR. SHELLY: Oh, yes, and the trend is very much in that direction. It is in that direction more and more all the time. The packing plants are doing the cutting and the supplying. You can buy almost anything from a packing plant and you do not have to do your own cutting. A lot of the small retailers are doing it that way.

THE CHAIRMAN: They would rather pay somewhat higher prices than do their own cutting.

MR. SHELLY: Yes. You find a lot of



grocers today who do not employ butchers and who do not know very much about the meat business themselves. They are just buying ready-cut from the packing houses.

THE CHAIRMAN: All wrapped in cellophane.

MR. SHELLEY: Yes.

THE CHAIRMAN: They do not need to know very much about the butcher business.

MR. SHELLEY: In view of that trend it really minimizes this problem you raised.

THE CHAIRMAN: Yes. It occurred to me as something that might happen. You have told us pretty well what the over-all effect of the operation of the formula would be. Have you any other comments to make?

MR. SHELLEY: I do not think I have anything else to say, no.

THE CHAIRMAN: Is there anyone with you who feels that before we close the hearing he might wish to add something? Do any of the other gentlemen wish to say anything before we close the hearing?

MR. SHELLEY: I believe not, sir.

THE CHAIRMAN: In that case, then, that will complete the discussion of this brief.

I should like to say, for the Commission, that we have been extremely interested in the proposal that has been made. We will have to study it with a great deal of course, to make up our minds as to whether we think it is entirely feasible, and having in mind also a matter which has not been





discussed here and which, strictly, is not our problem either, and that is the question of the constitutional approach to the matter. Because it will be clear that the proposal involves what might be regarded as a law concerned with property and civil rights, which is purely a matter for provincial legislative control.

We are a federal body making a report to the federal government. If it is a proposal which could not be implemented by federal legislation, then obviously it would be rather difficult for the federal government to try to make it effective. It could only be done then by approaching the provinces and seeing if they would pass the necessary legislation. However, that is a legal and constitutional problem which we have not looked into. But we would have to keep it in mind if we were to make any recommendation in connection with it. It would not be wise to make a report in which we would recommend that something be done which is constitutionally impossible. We will have to keep that in mind.

But we are very much interested, and we wish to express our very sincere appreciation to Mr. Shelly for the obvious extensive thought which he has devoted to it, and the time and effort he has expended in developing the formula and in taking it up with other interested groups with a view to sounding them out before presenting it to us.

No doubt, Mr. Shelly, you will continue to seek the views of other people with regard to



it and we shall wait to get the views of persons who are directly concerned with the economic and practical and legal application of a rule of this kind. We are most grateful to you for the amount of time and effort you have put into this, and for the length of time you have spent with us as well as for the very frank and fair way in which you have discussed the whole problem.

MR. SHELLY: Thank you very much. It was a pleasure to appear before you.

--- Whereupon the hearing adjourned on Tuesday, June 29, to be resumed the following day, Wednesday, June 30, in Edmonton.



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RESTRICTIVE TRADE PRACTICES COMMISSION

LOSS-LEADER SELLING

TRANSCRIPT OF EVIDENCE

- Vol. 13

EDMONTON

JUN 30 1954



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(No Exhibits filed at Edmonton)





RESTRICTIVE TRADE PRACTICES COMMISSION

IN THE MATTER OF

an inquiry

Regarding Loss Leader Selling

--O--

Hearing held (in public) in the Court  
House, Edmonton, Alberta, June 30, 1954.

PRESENT:

C. RHODES SMITH, Q.C., M.A., LL.B., B.C.L. Chairman

Guy Favreau, Q.C., B.A., LL.B. Member

APPEARANCES:

Mr. Paul Gerin-Lajoie Counsel for the Commission

Mr. R. M. Davidson Secretary to the Commission

REPRESENTATIONS:

Star Radio and Appliances  
Mr. John Esper

--O--

THE CHAIRMAN: The hearing will come to order. This morning I understand, Mr. Davidson, that there are no briefs to be presented, but that there is one businessman who would wish to appear before us and make some observations.

MR. DAVIDSON: That is correct.

THE CHAIRMAN: Then, Mr. Gerin-Lajoie, you may proceed.



MR. GERIN-LAJOIE: I understand that you wish to make some representations before the Commission. Would you please tell the Commission your name, your occupation and trade?

MR. ESPER: My name is John Esper, of the Star Radio and Appliances Company.

THE CHAIRMAN: Is that a limited corporation?

MR. ESPER: No, it is not.

THE CHAIRMAN: Privately owned?

MR. ESPER: Yes.

MR. GERIN-LAJOIE: Will you tell the Commission in what type of appliances you deal?

MR. ESPER: I have been specializing in all the top brand names in the last twenty-five years, Philco, Sparton -- all the leading brand names.

MR. GERIN-LAJOIE: What types of appliances?

MR. ESPER: Washing machines.

MR. GERIN-LAJOIE: And toasters?

MR. ESPER: Yes, toasters.

MR. GERIN-LAJOIE: Large and small appliances, in other words?

MR. ESPER: Yes.

THE CHAIRMAN: All of the major appliances -- what they call traffic lines?

MR. ESPER: Yes -- everything to do with appliances and television.

MR. GERIN-LAJOIE: How long have you been engaged in this?



MR. ESPER: Twenty-three years.

MR. GERIN-LAJOIE: Is this your personal business?

MR. ESPER: Yes, that is right.

MR. FAVREAU: Where is your business located in Edmonton?

MR. ESPER: I have two locations, one of which is on Jasper Avenue, 10611 Jasper Avenue, and also 15302 Stoney Place.

MR. GERIN-LAJOIE: How long have you had these branches?

MR. ESPER: About six months.

MR. GERIN-LAJOIE: Can you tell us if there is competition in that field in Edmonton, particularly, or is it very much an open market?

MR. ESPER: It is extremely competitive, very competitive. Of course we have always found it competitive, in the last twenty-five years in this business.

MR. GERIN-LAJOIE: Have there been a great number of new people doing business in that field in the past three or four years?

MR. ESPER: Well, four companies have, that I know of -- have started up. Originally, one of the men worked for me. One was my brother. One of the newcomers is my brother. And South Side Electric is a company I sold out two years ago, when I originally founded it, when I got out of the air force.

MR. GERIN-LAJOIE: Are those newcomers in



the business, or are they companies coming from other places and having stores in this city?

MR. ESPER: No, they are ex-servicemen, newcomers in the business. They are all veterans, like myself.

MR. GERIN-LAJOIE: And can you tell us in your field if you follow the suggested prices by the national manufacturers?

MR. ESPER: I have on many occasions; but, it never seems to work, to be frank with you.

MR. GERIN-LAJOIE: What is your practice?

MR. ESPER: In connection with this resale price maintenance I allowed 10 per cent selling commission or sales commission. Now I have adopted a policy of 10 per cent on newspaper advertising. In other words, I do that instead of the old fashioned way of getting after business.

THE CHAIRMAN: Would you explain how this 10 per cent off for sales commission operates?

MR. ESPER: In the past it would cost the full 10 per cent to hire a salesman, under price maintenance, because the prices were fixed and you could send a man out from door to door. Now we know we have not bothered hiring salesmen and sending them out from door to door because of the fact that there is no price maintenance. A businessman might sell \$50,000 worth in two months, and another competitor may undercut what he has sold at and it would cost more to repossess back from the finance company. It is not sound business.





THE CHAIRMAN: You allowed 10 per cent for the salesman's commission?

MR. ESPER: In the old days.

THE CHAIRMAN: But if a sale was made in the store you cut the price 10 per cent because you did not have to pay the 10 per cent commission?

MR. ESPER: I did not always cut, but I did cut if I was forced to. But we do not believe in a uniform policy of price cutting. However, on occasions I have cut prices. I have never sold loss leaders though because I do not believe in that. I have been in business long enough to know not to resort to that as an inducement. But I will advertise in general a price cut, along with a trade-in. Often I deliberately call a machine a used machine when it actually is not a used machine. But a man with a discount is in a bad position because he gets the reputation of being a straight discounter and, in time, you could not possibly operate at a profit.

MR. GERIN-LAJOIE: Is it your view that one retailer cannot operate on a lower cost than another retailer, and could not sell at such a reduction or at such a lower cost to the consumer, himself?

MR. ESPER: Yes, certainly they can, if they wish to. Any retailer can operate lower. I have proved that myself, when I have followed to as low as 30 per cent -- and that is with a staff of fourteen salesmen in a small business.



MR. FAVREAU: Thirty per cent of cost?

MR. ESPER: Although I honestly think it should be higher than that.

THE CHAIRMAN: When we are speaking about one business being operated at a lower cost than another one, this sort of thing occurred to me, that sometimes in quite a small business an operator or an owner of a business does not employ salesmen to handle the business, but handles it himself. The 10 per cent you have spoken of would not have to take into consideration that salesman's commission?

MR. ESPER: That is right.

THE CHAIRMAN: He might feel in those circumstances that he was operating at a substantially lower overhead than the man who had to pay a commission and, if he wanted to, he could cut the price to the consumer and still make a fair profit?

MR. ESPER: That is right, sir.

MR. GERIN-LAJOIE: Is it the policy of your business to advertise ---

MR. ESPER: Well ---

MR. GERIN-LAJOIE: Is it the policy of your business to advertise at prices lower than the suggested prices, in your advertisements in the newspapers?

MR. ESPER: Every company is doing it.

MR. GERIN-LAJOIE: Every company is doing it?

MR. ESPER: Yes; there is no company that



is not doing it.

MR. GERIN-IAJOIE: What do you mean when you say you do not believe in a general policy of price cutting?

MR. ESPER: Well, in my particular case -- and I am speaking of my particular case -- if I price cut -- and when I say "price cut" I do not mean loss leading. I would understand that by "loss leading" you mean selling at less than cost.

MR. FAVREAU: When you sell at less than the suggested price.

MR. ESPER: Yes. I sometimes take an average of 10 per cent and advertise below that providing there is a trade-in, because trade-ins are worth money, you know. This whole business is based on taking in old machines when you offer new machines.

MR. GERIN-IAJOIE: But, if there is no trade-in, do you still give 10 per cent discount?

MR. ESPER: I do not as a rule advertise that; and, if I did, it would be a demonstrator or a used machine or a repossession. I do not believe in straight price cutting on new merchandise, because I know when there is no price maintenance law, if I price cut, the next man will do so and it keeps on going until somebody gets hurt.

MR. GERIN-IAJOIE: What is the situation in your field in Edmonton? Are there other businesses which advertise at prices lower than the suggested prices?



MR. ESPER: There are many places -- the newspapers will show you that. There are many places that do that.

MR. GERIN-IAJOIE: But you do not to it?

MR. ESPER: I have never, to my knowledge, mind you -- I have never. I will advertise at a price cut if it is a demonstrator or a used machine or a repossession. But I do not practice the general policy of advertising new machines at cut prices. And I will always include a trade-in, if I do price cut.

MR. GERIN-IAJOIE: But, apart from trade-ins and demonstrators, just straight price cuts, do you do that?

MR. ESPER: No, not generally speaking.

MR. GERIN-IAJOIE: And you say that other retailers do?

MR. ESPER: Yes.

MR. GERIN-IAJOIE: You say they do advertise so-called price cuts?

MR. ESPER: Yes.

MR. FAVREAU: Others are advertising them in that way, as a policy?

MR. ESPER: Yes, and they do it all across Canada.

MR. GERIN-IAJOIE: But in Edmonton?

MR. ESPER: Yes. And I get newspapers from every city in Canada daily, showing that.

THE CHAIRMAN: But you say that that practice is very widespread in Edmonton, is it?





MR. ESPER: Yes, very bad.

THE CHAIRMAN: And are the cuts below the suggested price, what you would call deep cuts?

MR. ESPER: Well, certainly. I know, myself that some were advertising new refrigerators at 10 per cent above cost. Even the department stores would find it hard to compete with that -- and so would I -- unless someone put it in at the same level, or the same price as he did. But I put in "plus trade-in", which he did not do.

Where you are going to get into the position of selling merchandise and using price cutting as a leader, I think that is a very vicious thing to do; it is very bad. In other words, there has been a great shortage of salesmanship in the last ten years. Nobody sells on quality any more. And it is important to the public to buy quality because quality is always cheapest in the long run.

MR. GERIN-LAJOLIE: Would you say that it has become a problem in Edmonton, the competition of retailers at cut prices, the way you have just explained, while you did not cut them? Or do you say it is not a problem, from your own standpoint?

MR. ESPER: To be honest with you, I would not say that I do not price cut. But I do not price cut on new articles. If I do price cut, I only do it on demonstrators that are really new, and there is nothing wrong about that. I do not agree with price cutting for the sake of price cutting. But I



do say that there is that policy in Edmonton.

I have had one company in Edmonton for ten years, and I never spent money in advertising. I hold for price maintenance; but I noticed that all my competitors were price cutting by specifically allowing flat trade-ins. And that is another bad feature, the same as price cutting.

MR. FAVREAU: What is a flat trade-in; is it the amount a company allows irrespective of the state of the article traded in?

MR. ESPER: They put on a fixed trade-in allowance.

MR. FAVREAU: There is no effort to determine its real worth, and nobody to see it?

MR. ESPER: Yes. And because of using trade-ins to attract trade we cannot use salesmanship. They just use trade-ins to attract people, just the same as loss leaders.

THE CHAIRMAN: Did they not do that before the price maintenance legislation?

MR. ESPER: In the old days they did not do it because the manufacturers would have taken them to time.

THE CHAIRMAN: They did not have the phony trade-in values?

MR. ESPER: No. In those days I was in Ottawa, and they had a trade-in schedule. Everybody was acquainted with the schedule, and it was all in the schedule. If there was a \$30 trade-in, most fellows adhered to it.



THE CHAIRMAN: Then, you do not have anything like what one businessman in Toronto told us about, where he and others -- and this was before 1951 -- had what you would call phony trade-ins where they would give a man \$60 for an old broom on a new machine?

MR. ESPER: No, not that. That was an attempt to evade the regulations set down by the federal government in those days. The law was set by the government. That was just an attempt on the part of some of the dealers to sell to the public when the government did not really allow it.

THE CHAIRMAN: And they also wanted a considerable cut in price.

MR. ESPER: I, personally, think that it started this present situation. I do not know if anyone would object if I were to give personal opinions, but my personal opinion is that the government did the wise thing in connection with the price maintenance law. But they should have put an amendment into it.

MR. FAVREAU: What is that?

MR. ESPER: The federal government was very wise in lifting that.

MR. FAVREAU: But they should have done what?

MR. ESPER: They should have put some teeth in an amendment in connection with advertising methods, and eliminating trade-ins, so that there would have been proper advertising and all companies



would be selling on a basis of merit and quality.

THE CHAIRMAN: Do you mean by that that deceptive advertising is one of the worst features of the present situation?

MR. ESPER: That is right, because nobody is policing that matter, the matter of deceptive advertising. There is misleading advertising, advertising things at a terrific loss, and perhaps the dealer has not even got that article. It is just a gimmick for trade-ins. They say, "Oh, I am sorry, I have just sold it", and then he switches her along to something else. That is the worst phase of it.

THE CHAIRMAN: Sometimes it is difficult to prove that.

MR. ESPER: No, it would be easy. I could prove it just by the newspapers.

THE CHAIRMAN: But I mean it would be difficult to prove it in a court of law, if it ever came to that.

MR. ESPER: I would say that a company should be willing to accept some responsibility. I would make allowances for the newspapers making mistakes. If a mistake is made, then the public are entitled to take advantage of it. When a company advertises something the public is entitled to have that article at that price at which it is advertised. And if the newspaper makes a mistake, then there should be a law saying that within twenty-four hours a correction must be made.





MR. GERIN-IAJOIE: Do you think that if we had such a policing of business, including the policing of advertising and so on, that that might improve business, and improve the position in connection with flat trade-ins, and so on?

MR. ESPER: No; but as I said earlier, we have fair play laws. Our whole way of life has been based on fair play for all races. I think we should have the same fair play laws in business. We have referees in baseball games.

I do not mean federal controls, of course. Leave it to the retail merchants. If somebody could be free to walk into my place any time and say, "Look here, show us the facts", that would be all right, because if I am misleading in my advertising I should be confronted with it.

MR. GERIN-IAJOIE: Do you not think that it might be difficult to prove that the advertising is really misleading? It may be half misleading, if we may so describe it, or half true. Do you think that should be banned, also? Or, let us put it this way; do you not think it is a matter of opinion as to whether advertising is misleading or not?

MR. ESPER: Facts are facts. If a man advertises a thing I do not see how it could be misleading. You can take two refrigerators and put one on one side of the advertisement and then take a low priced refrigerator underneath that. I can take the best refrigerator on the market, a deluxe refrigerator,



and then put a lower priced refrigerator underneath that. I can show the price of the big one in small print. But I can put the lower priced one in big print, which is simply creating an illusion in the minds of buyers. I do not like doing that because, as I have say, I have sold with price maintenance laws and I have sold without price maintenance laws, and I can make a living either way.

Now, I honestly think that the federal government, or somebody, should pass laws governing correct advertising and the correct elimination of trade-ins in newspaper ads or circulars.

MR. GERIN-LAJOIE: What do you have in mind? What do you suggest should be corrected in connection with trade-ins? What should be done in connection with advertising of trade-ins?

MR. ESPER: I am looking at it from the standpoint of misleading advertising, from all three levels -- production, distribution and retailing. We want to build up one thing, and that is confidence. Now, if we want to fight this business, or this way of doing business, then I think that federally production should be licensed.

MR. GERIN-LAJOIE: Production should be licensed?

MR. ESPER: Yes, both federally and provincially. Distribution should be licensed federally and provincially, and retailing should be licensed federally and provincially. Then, whatever an object is produced at, the next thing to say is, "Is it



essential for a man to have so much percentage on cost, by law?" Now, under present circumstances I can go out and buy a carload of refrigerators and I can get an extra 5 per cent from my supplier. And, by means of specials, I can move those refrigerators within sixty days. I could move the whole lot of them, but somebody would be hurt in the process. And that is without loss leadering, just straight price cutting.

MR. GERIN-LAJOE: Would it not benefit the consumer in the long run?

MR. ESPER: I think the consumer does benefit by a certain amount of price fixing. If a lady wishes to buy a refrigerator and if it retails at \$300 and cost \$200, I think the dealer is entitled to \$100 profit. In the first place he has to protect that lady's investment in the next five years. If anything goes wrong he has to keep an expensive serviceman.

MR. GERIN-LAJOE: Do you mean that that \$100 would be required by any retailer?

MR. ESPER: Yes.

MR. GERIN-LAJOE: But is it not possible that one might be satisfied and do a proper business with only \$90 whereas another might need \$110?

MR. ESPER: No, I do not think that consumers are protected that way. I could adopt a policy of quick profit right now by laying my own staff off. And I could sell twenty or thirty machines a day. I can talk fast and move fast. But



what good does it do me if I sold thirty machines or did a million dollars worth of business -- in the long run you would have chaos.

MR. GERIN-IAJOIE: But do you think that all the retailers in Edmonton need exactly the same margin of gross profit?

MR. ESPER: At the trading level, yes, with no price fixing above that. In other words, if a retailer wishes to sell at a higher price then that is his business. Because in the first place there is the law of supply and demand, and the public must rectify that themselves. We know that any dealer today can be squeezed out by any other dealer who happens to be in a better buying position or has had more experience.

Or, to put it another way, being an experienced specialist, I am happier in the situation as it is. I am in my own element, because I know the business. But I do not believe in that position, and I think we are coming to the point in free enterprise where we have to have fair play laws, as the Americans are doing today. They are putting in fair play laws.

MR. GERIN-IAJOIE: If you wish to go into that, we could have a few questions on how that law works because, according to the information obtained by the Director of Investigation and Research, it is not working out too well in most of the states of the United States.

MR. ESPER: Well, if you need price fixing,







you have to have it in buying. That is just as important as in selling. Why should one big retailer walk in to one manufacturer and buy his whole output, and by-pass the distributor? I honestly believe that the producer should not be able to sell at retail and the distributor should not sell at retail. They all have their important functions in society. Why should a company that is distributing sell direct to the public?

THE CHAIRMAN: On the other hand, are not new methods of merchandising coming into existence from time to time?

MR. ESPER: I beg your pardon?

THE CHAIRMAN: Are not new merchandising methods coming into existence from time to time? Is it not possible that one step in the merchandising picture from the manufacturer to the consumer, might be eliminated by improvements in methods?

MR. ESPER: The manufacturer, at his level, is no different from the retailer. What I mean to say is, he has to be able to look ahead with confidence to find out how he can sell. He has to know how to buy his raw material; he has to have confidence and be able to look ahead.

Today there is no confidence, because if I advertise one day somebody will undercut me the next day. I am not suggesting that we go back to price maintenance in its entirety. I suggest it could be left as it is. But basic buying, at a person's laid-down cost, by law, should be either



20 per cent or 30 per cent or 40 per cent, as the case may be. And the federal government or the provincial government should be able to go in to a retailer and say, "Let us see your books. You are advertising below cost."

THE CHAIRMAN: Do you mean that the manufacturer or the wholesaler or both, should sell to all retailers at identically the same price, regardless of how many they buy?

MR. ESPER: Yes, for fairness; because the big fellow might say, "We are willing to invest a million dollars in this; why should we not have an edge on this deal?" The big operator will still have the edge, because of his largeness. The little fellow can say, "I live in a small way; I do not need all that."

And that is real democracy, at its very best. I could walk in and buy a refrigerator at the same price as the T. Eaton Company. This particular individual has worked hard and built up his business, and if he cannot compete he will have three or four salesmen going from door to door. But today the lady will say, "I think I had better buy from the biggest company because, after all, the bigger they are the better service they can give."

THE CHAIRMAN: There is another argument with which I believe you would not agree, when it is suggested that a big buyer who is placing one order for, to use your figure, a million dollars



worth of goods, is entitled to a somewhat lower price from the manufacturer because the manufacturer has only one order to deal with. He has only one billing to do and only one collection problem. Therefore the manufacturer's expense in connection with the selling of that million dollars worth of goods is substantially less than if he had sold to 200 dealers to the total amount of a million dollars.

Some of those dealers might be in financial difficulties and there might be some difficulty in collecting from them. In any case, there would be separate invoices and separate shipments as well as separate collections.

THE CHAIRMAN:

We have heard the argument that, under those circumstances, some reduction is justified. You would not agree with that argument, would you?

MR. ESPER: Yes, I do. I am certain that if there was a law passed the big operator and the little operator would have equal rights. The large operator or the little operator would have equal access to buying at the source in quantities, and getting an extra 5 per cent -- just to use that figure -- which would warrant him buying in quantity.

THE CHAIRMAN: Well, of course any reduction in price would depend upon quantity purchases.

MR. ESPER: Yes.

THE CHAIRMAN: And not on the identity of the buyer.



MR. ESPER: That is all right. In other words, any buyer should have the right to buy any quantity if he wishes to buy any quantity.

THE CHAIRMAN: At the same price as any other buyer?

MR. ESPER: Yes, there should be equality at the buying source.

THE CHAIRMAN: You have not got complete equality because the little man cannot buy ten carloads whereas the big fellow can?

MR. ESPER: It should not be raised to a maximum of ten; there should be a minimum.

THE CHAIRMAN: You would fix a fairly low level?

MR. ESPER: Yes, a minimum amount of machines in order to participate -- one carload, we will say.

THE CHAIRMAN: You suggest that something like one carload should entitle a person to a somewhat lower price than three machines?

MR. ESPER: Yes.

THE CHAIRMAN: But any multiple of carloads would not entitle him to any greater discount?

MR. ESPER: That is right.

MR. GERIN-LAJOIE: Could you conceive the scale of discount, for one carload, or five or fifteen?

MR. ESPER: If I had cash, I could do it. It might take three weeks or two months. I think I could draw up the whole thing, subject to legal





terminology. But I would go into production and distribution and retailing, as well as exports and imports, federally. If we wish to sell in world markets and look after Canada's business -- if we wish to sell for export, then a licence should be taken out federally. And if he is licensed, you would have to tell him that if he is taking capital out of the country he cannot undersell Canadians. It would be a rigid system.

MR. GERIN-LAJOIE: Do you not think it would have a freezing effect on the Canadian economy? I have this in mind, regarding the role of the wholesaler and the retailer. If we have new merchandising policies and methods, do you not think that one or two of those functions might be accomplished by one change? For instance, in the food business while there has been much development in the past twenty or thirty years, wholesale and retail functions are being accomplished by one agency. Let us say it is the chain stores.

MR. ESPER: I think that should be abolished. The wholesaler should not be able to sell retail. If he wishes to operate at retail, as well as producer or distributor, then a fixed profit should be indicated. If he wishes to be distributor as well as producer his invoices should show a fixed landed cost, at whatever price is determined. And it could be controlled very easily that way.

MR. GERIN-LAJOIE: Let us just take the



food business as an example. If, with the chain stores, we have lower prices for the consumer, and if this enables business, all the people in that business to live from it, do you not think that is a good thing for the country?

MR. ESPER: I did not get that last part of your question.

MR. GERIN-LAJOLE: They perform two functions, wholesale and retail. It seems that they can live out of it, and sell cheaper than others. That is the example I give. Do you not think that is a good thing for the country?

MR. ESPER: Well, I still maintain -- do you mean that that is a really good thing for the country? Is it not a fact that the businessman gives employment and do we not recognize that all these levels of distribution are necessary? In other words, you are assuming that he sells cheaper.

MR. GERIN-LAJOLE: Yes, that is my assumption, for the purposes of this discussion.

MR. ESPER: That chain stores sell cheaper?

MR. GERIN-LAJOLE: Yes. It is an hypothesis. We are considering that there are three functions, namely, manufacturing, wholesaling and retailing.

MR. ESPER: Yes.

MR. GERIN-LAJOLE: And that these have to be controlled separately, as you suggest, and have



to remain separate functions. Now, I say, if by developing new methods of merchandising we were able to combine two of those functions -- and again this is hypothetical -- and sell cheaper to the consuming public, would that not be a good thing?

MR. ESPER: It would be good for the public, perhaps. But, let us assume that the big get bigger and the small get smaller. The first thing you know these giant chains get together and they have a cartel and there is cartel fixing. I say it is the little man who keeps the fountain of business going. Right now -- today -- if a lot of corporations want to get together and keep squeezing the competitors out, how are you going to control it? What is to stop retailers from fixing prices? And where are the public then?

MR. GERIN-LAJOIE: We have laws and commissions to look after those problems.

MR. ESPER: But they can do it verbally; you cannot stop them. That cannot be proved. I maintain that the little businessman and the big businessman should be equal and that they should have equal opportunity in buying, with particular attention to fair play in carload buying. If one can obtain a little more, then one should have a better price. Thereafter you have free enterprise. The little fellow can work along and everybody can work to the greatest of his enterprise and energy.



MR. FAVREAU: You have told us that in your opinion real loss leadering is a bad thing. From whatever survey of the trade you have made, and from your general knowledge of the appliances trade in the city of Edmonton, or in Edmonton district, would you be in a position to tell us in a general way whether or not there is to a certain extent a prevalence of actual or real loss leadering?

MR. ESPER: Do you mean by "loss leadering" selling at cost or lower than cost? Do you mean at the retail level?

MR. FAVREAU: I am speaking of the retail level now. Let us take, for instance, selling at the retail level at a price which is lower than the actual cost, plus a normal markup.

MR. ESPER: I would say that the policy of selling a little below the manufacturer's suggested retail price is prevalent. But I would not say that loss leadering is prevalent. I know it is not prevalent.

MR. FAVREAU: There is no prevalence of a practice whereby, in selling at retail, the retailer would actually lose something?

MR. ESPER: No, there is not. In the major appliances field, both big and small, it is all well-known products. Certainly I would not have the gall. If there is loss leadering on simple items, it is easy for a person to advertise, if they are so inclined. If they are in the food business it is easy to advertise table oranges at





one cent each. And then, locally, they cover up in the newspapers by putting in "Limited, twelve to a customer". And they hope that through that item people will buy other things when they come to the store.

MR. FAVREAU: But I have been asking you about your experience in the appliances field.

MR. ESPER: No, that is selling below cost. The only instances I have known, occasionally, I have seen occasions where they will advertise a given article, and when the customer comes in I presume they have not got it. They hope that they will switch him to something else.

THE CHAIRMAN: When you are speaking about loss leadering, you are speaking of selling at a price that is less than the laid-down price to the dealer?

MR. ESPER: Yes, that is right.

THE CHAIRMAN: We have had several different interpretations. I just wished to be sure what you had in mind when you were speaking about loss leaders.

MR. ESPER: I am aware of what "loss leader" would imply in the dictionary, for the man who is interested in it. But I would not consider a 10 per cent cut at retail is loss leadering. That is not a loss leader. A loss leader is selling below your cost or at cost.

THE CHAIRMAN: Does your cost mean the price to you or the cost to you plus a certain amount



for overhead?

MR. ESPER: The retail level, to me, is my price, plus my overhead. A loss leader, to me, is selling at your cost in order to take a quick and temporary advantage over your competitor.

THE CHAIRMAN: Selling at the price you paid or less than that without regard to any element of your own overhead cost?

MR. ESPER: Yes; I always comply with the provincial government, which must be 5 per cent above your cost. That is the provincial law. It is illegal provincially for any dealer to do otherwise; he must be 5 per cent above his cost.

THE CHAIRMAN: Above the price he pays?

MR. ESPER: Yes.

MR. FAVREAU: In your experience, do I take it there has been in Edmonton, or that there is in Edmonton, more deceitful advertising than there is actual loss leadering?

MR. ESPER: I would not say it is very prevalent one way or another. But I would say that there is the odd case where it has happened. I would go further than that, and I would say, according to the leading newspapers right across Canada, I would say it is prevalent right across Canada. And I get those newspapers daily from every city. I know that when a man advertises a refrigerator at \$169, to me it is physically impossible to sell it at that price. Because the cheapest refrigerator I can buy is \$152 -- and



I get that price when I buy them by the carload lot.

But, on the whole, generally speaking, I do not think there is much loss leadering in Edmonton or across Canada, nor is there much false advertising to any extent. The complaints are where one dealer is a quicker thinker than another one. He puts an idea out fast and brings the public in and pushes over the sale for something at a higher price.

THE CHAIRMAN: Some of that might be regarded as good business.

MR. ESPER: There is nothing wrong with it. It is honest business. After all, you can advertise a refrigerator at \$169, a cheap one; but it still looks better to the public than not offering any refrigerator. And then, after the customer comes in, I may find out that the lady has ten children and it would still be good policy to suggest a bigger unit to her. That is just good business.

THE CHAIRMAN: Good policy, and good business, too?

MR. ESPER: Yes. We do that, and it is under price maintenance. Without mentioning names, I understand one company that nationally advertises vacuum cleaners at \$15 or \$10 or \$9 -- I was speaking to the advertising manager of the newspaper here today, and he said, "What do you think of that company?" I said, "Well, they



use the word 'rebuilt'. There is nothing wrong with what they are doing." And, mind you, they are opposition of mine.

But, so long as a person uses the word "rebuilt", and so long as it is honest advertising, that is all we need.

THE CHAIRMAN: Just so long as the public are not deceived as to what they are getting.

MR. ESPER: That is correct. The public should never be deceived as to what they are getting. And of course I could suggest a lot of things. They should eliminate contests. That stops buying.

When anyone advertises a refrigerator, free, the general public just quits buying.

THE CHAIRMAN: You mean that when a contest is advertised the people go in for the contest and wait until after they have lost the contest before they buy?

MR. ESPER: Yes, they adopt the one-in-a million chance, while business, generally, suffers.

MR. FAVREAU: Most prizes across Canada seem to be motorcars. It would not seem that the motorcar industry has suffered very much.

MR. ESPER: I am all for contests for church affairs and welfare organizations, but not in business. I believe that merchandise should be sold by business on the basis of quality and that it is only mass buying and selling that keeps prosperity going. There is no other answer. You have to sell what you produce. And, in the field





of psychology -- I don't know -- I understand that today business has fallen off a lot. Yet the public have more money than they ever had in their savings account. When you see ten dealers price cutting it creates a psychological backwash, and the public say, "Let us see, things are really going on." And in the process the public loses, just as well as the dealer. I think there should be a minimum amount of price fixing. In that way the public have to be sold on the idea that they may not get a lower price, but that they will get service to back it up -- which is in their interests, in the long run.

THE CHAIRMAN: I would like to have clearer what you mean by a minimum amount of price fixing. You have told us that you think there should be uniform prices by manufacturers to wholesalers and by wholesalers to retailers. Now, to what extent do you think there should be price fixing at the retail level? You told us that retailers would get the goods at the same price. To what extent would you have price fixing at the retail level?

MR. ESPER: We need fair play in business. The country is built on fair play. We have lost some property rights so we need fair play in business. We do have it, but not enough of it. Then, secondly, we must recognize that production, distribution and retailing are essential to the economy. In other words, the



distributor -- is he essential? That is the middle man. Now, if we recognize that fact -- and I think, personally, think he is essential, because he helps the small businessman in the west.

It is all right in the East where the factories are located and you can buy direct. But, once we recognize that production, distribution and retailing are essential, then I think they should be licensed both federally and provincially. And you would have to take into consideration, of course, both export and import.

Then, take the man at the production level -- I think the law should be such as to guarantee him a certain percentage of profit on cost at the production level, and the same at the distribution level and the retail level.

THE CHAIRMAN: Do you mean that he should be prohibited, that is, the retailer should be prohibited from selling at less than a certain markup?

MR. ESPER: That is right.

THE CHAIRMAN: Would that markup be fixed, in your opinion, fairly low so that the usual price would be higher ---

MR. ESPER: Not much higher. But it would guarantee that no one dealer could squeeze out another one unless the man was absolutely a misfit, himself.

In other words, today, as it is, I could advertise at 5 per cent above cost and I would comply with the federal law, if there is one, and I



would comply with the provincial law. I know that in time I could be cutting my expenses and causing unemployment by laying off my staff. And I could make money. But it would not be in the interests of the public because I would not expect to be around here a year from now to give the public service. I would just want to get a quick dollar and then get out.

THE CHAIRMAN: You do not think it is feasible, in practice, to operate an appliances business at a substantially lower overhead than most dealers do and stay in business, and continue to make money?

MR. ESPER: Not unless he is doing backdoor buying.

THE CHAIRMAN: We have had some evidence of a number in the East who ---

MR. ESPER: I don't believe in that.

THE CHAIRMAN: --- who seem to have been making a lot of money over a number of years, and who are still doing it.

MR. ESPER: Well, they are either buying cheaper from American sources or there are kick-backs from the factories, or something. No dealer can operate on 10 per cent and still give service to the public, with qualified service personnel permanently attached to the staff for five years. In the case of refrigerators you have to have trained men and you have to be able to send those men out and give service when it is required.



THE CHAIRMAN: Does your bookkeeping enable you to tell us what your average cost of your service department is, with respect to your larger machines?

MR. ESPER: It has been operating at a loss ever since I have been in business.

THE CHAIRMAN: You estimate that you need a certain markup, and you set roughly 30 per cent.

MR. ESPER: That is a minimum.

THE CHAIRMAN: And you think it should be more?

MR. ESPER: Yes, it should be more.

THE CHAIRMAN: What part of that 30 per cent is necessary because of the service which you give in respect of those implements or appliances for a year or five years, as the case may be, after they are sold?

MR. ESPER: It would at least be 7 per cent.

THE CHAIRMAN: About 7 per cent?

MR. ESPER: In my case I have four men in one store and I pay an average of \$70 a week. They are service men.

THE CHAIRMAN: Do they do entirely service work, for which no additional charge is made?

MR. ESPER: Ninety-five per cent of it is free, for which we cannot get payment -- just giving service.

THE CHAIRMAN: On machines you have sold, subject to a guarantee of service?





MR. ESPER: Yes. And service is a tremendous item, a tremendous liability. Our liability to the public, servicewise, is tremendous. Profits are down. But we just have to give that service, and to keep with it, or reduce the service to the public. In other words, I think it is in the interests of the public to make sure that they deal with dealers who can give them service and they should be willing to pay a profit to the dealer for that service.

THE CHAIRMAN: Do most of your larger appliances require much servicing, after they have been installed?

MR. ESPER: I beg your pardon?

THE CHAIRMAN: Do they require much servicing after installation?

MR. ESPER: Yes. Vacuum cleaners, three times a year, and radios with the automatic record changers as much as six times a year. Refrigerators do not require servicing quite as often, but they still need some servicing.

THE CHAIRMAN: Perhaps I have not been very lucky, but I have always had to pay for service for my refrigerator.

MR. ESPER: Under the warranty the dealer is responsible for the first year, and he must give free service during that time.

THE CHAIRMAN: I never was able to get any of that free service the first year, because I did not need it.



MR. ESPER: When you are a specialist you have to keep that service available for the public.

THE CHAIRMAN: I think we understand your position. So far as the need for some price fixing is concerned, you would start by requiring the manufacturer to sell at uniform prices to all purchasers, with only some reductions based upon quantity?

MR. ESPER: Yes, carload buying.

THE CHAIRMAN: You would put a carload, as a limit, for reductions?

MR. ESPER: Yes.

THE CHAIRMAN: And then you would require the wholesaler to sell to the retailer on identical terms?

MR. ESPER: Yes.

THE CHAIRMAN: And you would require the retailer to have a fixed minimum markup, and that he must sell at that figure?

MR. ESPER: Yes.

THE CHAIRMAN: Normally he would probably sell somewhat above that, but you would have no objection to his selling at any price between a fixed minimum and what might be regarded as the regular price?

MR. ESPER: Yes; he would never be free to use vicious tactics, if he happened to be more powerful.

THE CHAIRMAN: Then, I should like to go



back to something Mr. Gerin-Lajoie referred to. It refers to another business, namely, the food business. It seems to have been generally accepted that the development of chain stores and super-markets and shopping centres has resulted in a lowering of the total cost of doing business, from the manufacturer to the consumer. So that, at the retail level, instead of perhaps an average markup of 30 per cent, such as existed perhaps thirty years ago, now not only the chain stores but also the independent retailers operate -- and of course they vary -- but we can say that they operate somewhere between 15 and 18 or 19 per cent.

That would seem to mean, as Mr. Gerin-Lajoie suggested, that it would be a good thing; because the businesses that are doing it appear to be profitable and the public is paying less than they would pay or than they would have paid under the old practice if it had remained. Do you agree that that has been a good development, taken on the whole; or do you think that the ill effects are greater than the good effects?

MR. ESPER: I think the ill effects are greater. In the first instance, corporations are getting bigger. Let us put it this way, that if some provision on cost was applied there the public would still get value for their dollars, if the dealer had a fixed amount at the retail level. The whole thing is this, that you should either leave everything wide open and have no laws governing



retail trade or you should have a minimum amount of laws to govern fair play in business and economy.

THE CHAIRMAN: But what I am trying to get at is that, if the development of these types of merchandising has resulted in greater efficiency, so that the smaller markup or margin is necessary to do business profitably, is that not a good thing for business and for the country as a whole?

MR. ESPER: Yes, provided that everybody has equal advantages at the buying level. We are all interested in the consumers' benefit; but would you still have it if these big companies get bigger and the small fellows fall by the wayside? It is the small businessman who is the backbone of the country, after all.

THE CHAIRMAN: It is true that a number of retailers and grocers have gone out of business in the last thirty years or so. Nobody is disputing that fact. But it is also a fact that many retailers have streamlined their business methods and have developed a more efficient way of proceeding, with the result that they are able to compete successfully with the chain stores. Is that not also a good thing?

MR. ESPER: Well, I am not familiar with the grocery business. I am in the appliances business. But let us take cigarettes as an example. If one chain store decides to use cigarettes as a loss leader and sells them at cost, he gets a





terrific run of public buying, and they buy other things at regular or inflated prices.

Now, does that help the poor little fellow, or does it help the public? Remember that nobody gets anything for nothing in this world. I believe that the public should always get value for their money so far as possible. And I do not think that Safeway, or any other company -- and perhaps I should not use any names -- could give any more service. The small dealer can compensate by giving night service, or something like that. They can sell cheap enough if they have production as well as distribution. However, in the long run, we would have supermarkets and no small business would be left.

THE CHAIRMAN: If that was the result -- but it does not necessarily, it seems to me, result in that. However, I do not wish to get into an argument with you. We are just here to get your views and your opinions and any facts that you may have to give us. I just wished to get your views as to the possibilities in connection with increased efficiency and new methods of doing business which, in some instances, might perhaps lead in some kinds of business, even to the elimination of one step in the process of merchandising. I was wondering whether you thought that was necessarily bad or whether in the long run it might be a good thing. In your field it applies to some extent, because some of the manufacturers of traffic



appliances deal only through jobbers.

MR. ESPER: Yes.

THE CHAIRMAN: Some at least of the manufacturers, those who handle the major appliances, deal both through jobbers and directly through retailers. I would like to have your view as to whether the second class of business is a bad thing, necessarily, or whether you think it indicates a trend to the position in which the jobber might not be necessary in the field of major appliances.

MR. ESPER: Well, I could go back to what I said earlier, that first of all you have to recognize that the producer and the retailer, as well as the distributor is an essential part of our economy.

THE CHAIRMAN: But is he? That is what I am asking.

MR. ESPER: Yes, very much so.

THE CHAIRMAN: Is he?

MR. ESPER: He gives employment and he invests millions of dollars, connected with both the small retailer and the large retailer. No medium retailer would survive without the jobber. The jobber is an essential part of good business.

THE CHAIRMAN: I think we would agree that the jobber in many fields is a necessary part of merchandising, or he would not be there.

MR. ESPER: He takes credit risks. In my case, I deal with a jobber most of the time.



I would not be in business today if it was not for the jobbers. And, another of the factors we have not mentioned is that of financing. When you have no laws fixing the profits it is human nature to take the line of least resistance. There are too many repossessions, and that is what causes bankruptcies. I might think that a dealer has been careless in selling to the wrong people in the first instance. But, remember this, that there is no price fixing on buying.

Some of the public may not take their commitments very seriously. They may buy a refrigerator today at \$300 and next day another company advertises it for \$250. Now, the first dealer is taking 10 per cent down, which is \$30, and the second dealer gives the price a month later. The public will say, "Well, why should we make that payment? We will net \$20 by returning it as a repossession." People should be fair about these things.

THE CHAIRMAN: There is nothing to prevent their being sued, is there? The law is there.

MR. ESPER: But the average businessman would not do that. It is bad publicity.

THE CHAIRMAN: Sometimes it is necessary to do a few unpleasant things in order to make the public realize their obligations. The only escape from that is to make your down payment so large that they would not turn them in for repossession, although perhaps you would not make so many sales.

MR. ESPER: Yes, we advertise to do that.



THE CHAIRMAN: However, that is something that the retailer has in his own hands.

MR. ESPER: I financed \$340,000 in the last eight months. My total time sales were over \$340,000, and our total delinquents were only \$34.

THE CHAIRMAN: It is not much of a problem for you, then?

MR. ESPER: No. We are very selective in deciding to whom we shall sell.

THE CHAIRMAN: But you say you are not much undercut by other people?

MR. ESPER: Not knowingly, no; but of course

THE CHAIRMAN: From what you have said, if somebody else undercuts you substantially, you would probably get some repossession?

MR. ESPER: Yes.

THE CHAIRMAN: And your conclusion is that you are selling at a low enough price that you are not undercut very much.

MR. ESPER: That is right.

THE CHAIRMAN: I think that concludes the questions we have to ask. If there is anything you wish to add, yourself, by way of general comment, you are free to do so.

MR. ESPER: I certainly would be pleased to send in information in writing, at any time.

THE CHAIRMAN: We will be glad to have anything in writing you would like to send us.

MR. ESPER: The whole picture.





THE CHAIRMAN: The whole field?

MR. ESPER: Production and distribution.

THE CHAIRMAN: That is, in your experience in the appliances industry?

MR. ESPER: Yes.

THE CHAIRMAN: And your opinion as to what the tendencies are, and what the remedies might be -- if you think remedies are needed.

MR. ESPER: I will put that in.

THE CHAIRMAN: We would be glad to have that, if you would like to send it in, in writing.

MR. ESPER: Yes, I will do that.

THE CHAIRMAN: Then, as there is nothing further this morning, we will adjourn this sitting in Edmonton and we will resume next on Friday, July 2, in Victoria, British Columbia.

--- Whereupon the hearing adjourned on Wednesday, June 30, to be resumed Friday, July 2, at Victoria, British Columbia.



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RESTRICTIVE TRADE PRACTICES COMMISSION

LOSS-LEADER SELLING

TRANSCRIPT OF EVIDENCE

Vol. 11

VICTORIA

JUL 2 1954



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RESTRICTIVE TRADE PRACTICES COMMISSION

IN THE MATTER OF

an inquiry

Regarding Loss Leader Selling

--O--

Hearing held (in public) in the Court  
House, Victoria, British Columbia, Friday, July 2,  
1954.

PRESENT:

C. RHODES SMITH, Q.C., M.A., LL.B., B.C.L.,	Chairman
Guy Favreau, Q.C., B.A., LL.B.	Member
A. S. Whiteley, B.A., M.A.	Member

APPEARANCES:

Mr. Paul Gerin-Lajoie	Counsel for the Commission
Mr. R. M. Davidson	Secretary to the Commission

REPRESENTATIONS:

The Independent Merchants Cooperative Association:

Mr. Wm. Palmer  
Mr. Neil A. Whitney  
Mr. A. Patton

--O--

THE CHAIRMAN: I might say for the benefit  
of most of those who are present, and who have not  
been familiar with the practice during this inquiry,  
or with what has taken place previously, that the  
inquiry began immediately after the Restrictive Trade  
Practices Commission was established at the end of





1952. It was commenced by the officer known as the Director of Investigation and Research pursuant to recommendations made by the MacQuarrie committee, which was the committee on whose recommendations the law was changed in 1951 and again in 1952.

The Director of Investigation and Research made numerous inquiries from various trade associations, organizations and businessmen, and obtained a great deal of information which is compiled in a book which is described as a statement of facts and information obtained by him, in connection with his inquiry into loss leaders.

1) He supplied that book to the Commission and to all interested parties of whom he had any knowledge, and any whom he thought would be sufficiently interested to consider taking some action in the matter by way of supplying information to or appearing before this Commission.

Upon receipt of that book the Commission proceeded to carry on with what we might call the concluding stages of the inquiry which had been previously carried on by the Director. These stages consist of the holding of public hearings in different centres across Canada, where businessmen, organizations and individuals have expressed their desire to appear and to present briefs or to give opinions or information concerning this subject of loss leaders.

We met in Ottawa, in Toronto and in Montreal, in eastern Canada; and during the last few



days we have met in Saskatoon and Edmonton. After completing this hearing in Victoria, we are to meet next week in Vancouver.

It is desired that as much factual information as possible concerning the use of loss leaders should be obtained. We are also anxious to get opinions of people who are presenting briefs or who are appearing before us as to the effect of loss leaders. And, in particular, we would be glad to have the views of those who appear before us with respect to what they mean when they refer to a loss leader. Because I can assure you that, during the hearings, to date, we have had several different definitions. We want to be sure that when any of you refer to a loss leader we will know what you mean when you use that term. Otherwise we will not be quite sure to what it is you are objecting or, if the shoe is on the other foot, what it is that you consider is satisfactory.

That, I think, is sufficient by way of introduction to what has taken place up to this date. This morning we are to have a brief presented, I understand, by and on behalf of the Independent Merchants Co-Operative Association.

I would ask whoever is actually presenting the brief to come forward to this table to my right. If there are any others who are present and who are appearing along with the person offering the brief, they might also take a place at the same table.

The practice which has generally been



followed and which, I believe, has worked satisfactorily is for the man who is actually presenting the brief first to read it and to make any comment he may wish concerning any point in the brief during the course of that reading. Then, having completed the reading of it, he is free to add anything he may desire. Then, any other members of the delegation who feel that something should be added, are then at liberty to make such additions as they may wish. Following that we will have questions and discussion concerning the matter raised in the brief.

To begin, we would like to have your full names, the positions you hold in the organization, and any other information that would be useful to us.

MR. PALMER: My full name is William Palmer, and my residence and place of business is 1109 King's Road, Victoria.

THE CHAIRMAN: Are you an officer of the association?

MR. PALMER: Treasurer of the association, and have been past president during the last two years.

THE CHAIRMAN: Who are with you?

MR. PALMER: There is Mr. Neil A. Whitney of Douglas Street, one of the directors, and Mr. A. Patton, another independent merchant. He is vice-president of the organization.



THE CHAIRMAN: You may proceed with your brief, Mr. Palmer.

MR. PALMER: I shall proceed by reading the brief as it was submitted to the Restrictive Trade Practices Commission. This is a brief on loss leaders directed to the Restrictive Trade Practices Commission, and made possible by the Combines Investigation Act. It is as follows:

We, the members of the Independent Merchants Co-Operative Association, comprising sixty-one merchants in Victoria, wish to thank the parties responsible for making this hearing possible that we and others who are in the retail business may voice our opinions regarding "loss leaders."

Common sense will speak for itself -- if you have something to give away the customers will always go and get it regardless of where it is or at where it is offered to them at the lowest price. We do admit that price maintenance is the answer to prevent some small businesses from going out of business. With these large monopolies expanding in a city the size of Victoria, the test is too severe on independent merchants regardless of what field they may be in -- food, electrical goods, hardware, and a host of others. If the governments in power could work with the manufacturers on these principles of price structure there





would be no room for "loss leaders".

As we cannot restrict them from building these massive structures, the governments in power should tax all chain outlets according to population in various cities. As the customers are led to these stores only by their "loss leaders", or cut prices, which they are able to do being direct buyers, they therefore have the advantage over the small independent merchants. We will not go on crying about circumstances but present the facts to you on what we consider "loss leaders".

(1) The first item we will mention as a "loss leader" is cigarettes. Across the Dominion, cigarettes held the same price range. Then a chain store decided to cut the price on this commodity on account of restrictive trade policy in force. So in order to stay in business most of the smaller stores had to follow suit. Every commodity sold in a store has to show a reasonable profit to be able to meet overhead expenses, etc. Now enters the real villain of the piece in the guise of the Anti-Price Fixing Law, passed by the present government in Ottawa, which is an open invitation to those interests sufficiently powerful to wage unrestricted price war on their weaker competitors and ultimately destroy



them. It is also well to bear in mind that the tobacco industry, being a very lucrative source of revenue from the government point of view and with the prevalent socialistic tendencies of all governments, a chaotic condition in the distribution of cigarettes might well lead the present or some future government to the conclusion that a government monopoly is the solution, as exists in many other countries, and as we have in the case of liquor. No great imagination is required to picture what prices would likely be then. The price structure of cigarettes follows:

\$2.80 selling at 31¢ equals 30¢ profit  
showing 10 per cent profit.

\$2.80 selling at 3 for 89¢ -- total  
take \$2.97 showing 7 per cent profit

\$2.80 selling at \$2.95 -- 15¢ profit --  
showing 6 7/8 per cent profit

Therefore, we ask the Restrictive Trade Practices Commission to adjust this matter to suit all parties, as in our minds cigarettes is a "loss leader".

(2) The next item we will mention is the milk question in Victoria which is, beyond a doubt, a "loss leader". All stores in this community are selling this commodity as a "loss leader". Since controls were lifted, we and the farmers are worse off than ever. This commodity is a necessity to the customer and we do not wish



to use it as a "come on". However, we feel the merchant, big or small, should receive a fair profit -- at least 2 cents per quart. The dairies will not budge on their price structure. Here follows what they pay and what we receive:

Farmers are paid at the rate of \$6.10 per hundredweight of standard milk to the extent of their quota which, in many instances, is 400 pounds. Some farmers are bringing in 800 pounds and receive \$2.70 for the extra 400 pounds, but it is all distributed to the homes at 24 cents per quart, or to the stores at 23 cents per quart, and the stores are forced to sell this commodity at the same level as the distributor sells it at the homes, which is 24 cents per quart. So, over-all, the distributors are making vast profits and the small retail stores are on the "short end of the stick", getting one cent per quart, which shows less than 5 per cent profit. According to British Columbia and Ontario laws which, I am led to believe, are still in power we are selling milk below the profit allowed. As the MacQuarrie committee stated, "The large chain stores will eventually push the small man out." The milk question is one of the instances. If the monopolies were allowed their own dairies and distributing points it



would eventually happen.

92)

A milk board decision gave the Canadian Safeway Limited and subsidiaries authority to supply them to the Safeway Stores in Vancouver. A decision of Canada Safeways, Lucerne Milk Company, applied for certification last year to distribute milk. The application was turned down September 19, 1953 by the milk board. The Cabinet announced that after reconsidering it, it had decided to grant the certificate. The milk company wanted to operate a milk processing and distributing plant for selling and supplying milk to Safeways Stores.

After last year's refusal by the milk board, Lucerne appealed to the Cabinet, and the appeal was heard on November 15, 1953. All the distributors in Vancouver are opposed to the company's application on the ground that it would be unfair competition for them, because it must apply to all retailers, not just one chain.

A direct tie between producer and retailer may mean reduced prices of milk to the Vancouver buyer. And this proves what was said in the MacQuarrie committee statement, that eventually the small man will be pushed out, because we know that Safeway most definitely will use milk as a "come-on". They will place it at the end of their store, where people are forced to go, and they will be forced to take it on their own initiative, as most of the buying today is done on the impulse of the moment. They will pick up other things.





And it is one of the catches used by Safeway and other monopolies, in connection with the buying of other commodities by the public. They eventually -- and you can quote my words and prove to me in the near future that I will be correct -- Safeway will cut the price of milk beyond the small independent merchant, having their own distribution plant.

(3) Ice cream is another item which is a headache. Chain stores can purchase this product and sell it for 24 cents and 25 cents per brick and then receive a bonus on their sales at the end of each month. Here follows a breakdown on prices:

Ice cream, according to actual figures is sold to all stores at the price of \$2.88 per dozen. Small stores do not have facilities for carrying four or five brands of ice cream. These stores carry one or two brands and have to sell them at 30 cents per brick to make a reasonable profit. If small merchants do not sell over 500 gallons they receive no rebate, whereas the chain stores sell ice cream at 24 cents and 25 cents per brick and at the end of each month receive from the distributors or manufacturers of ice cream a rebate equivalent to their sales.

(4) Eggs is the next item which constitutes a "loss leader". Prior to Easter week-end, all stores buy extra eggs to meet the demand.



This year the demand was not great at small stores due to the extensive advertising put on by all chain stores selling eggs at 2 dozen for 99 cents. This is an example of a "loss leader", as these eggs cost, at that date, 49 cents per dozen. (Attached are Exhibits A, B and C. A will be the advertising article; B will be market price of eggs at that date, and C will be the invoice showing that we paid 49 cents. This was submitted in detail to the Commission).

5. Miracle Whip -- On May 8th, a 32 ounce jar was advertised by the chain stores in the daily papers at the price of 75 cents. However, cost of this commodity at that date was \$8.85. These stores have their own outlets and own wholesale which is at a greater saving than the independent merchants can compete against. If we buy 200 pounds we get it at \$8.45, which amounts to  $71\frac{1}{2}$  cents per jar and which amounts to a lot of money for small merchants to lay out, but the chain stores, which are the monopolies, buy it by the carload lot and are supposed to keep to a maintained price level, which they promised and which they do not do. Hence, the trouble starts and develops into "loss leader" tactics. We would suggest, therefore, that the Kraft Company go back to its old arrangements in distributing Kraft products



to all stores. (Attached is Kraft price list).

6. Canadian Pork Luncheon Meat was sold to the independent stores at \$6.48 per case on May 11, 1954, while chain stores advertised it at two for 55 cents -- another example of "loss leader". This proves again that monopolies are certainly going to be victorious in their conquest of all distribution of goods to the public in the near future and the small merchants will be out. (Attached is substantiating evidence. This was submitted to the Commission.)

7. Weiners on the date of May 20, 1954, sold in chain stores at various prices -- 2 pounds for 65 cents or 2 pounds for 59 cents. Cost to small independent merchants was 36 cents per pound -- which is a "loss leader" as invoice and advertisements will prove. This was submitted to the Commission. Also of date May 27, 1954, weiners sold at 35 cents per pound, as advertised by B. K. Stores.

The above are facts and no guesswork is embodied in any of these statements.

The data contained in the above brief has been compiled by the past president of the Independent Merchants Co-Operative Association and edited by the corresponding secretary. This brief has been approved by the sixty-one merchants who wish that the authority in power will be well versed on what to



our minds constitutes a "loss leader".

We respectfully thank the parties concerned for giving us this opportunity of presenting our brief.

Then, on the last page of the brief is what we consider to be a list of monopolies existing in Victoria. It is as follows:

List of Monopolies Existing in Victoria

1. Malkins -- B & K Economy Stores  
(G. Weston - Tycoon)
2. Kelly Douglas -- (National Grocers of U.S.A.)
3. McDonald's -- Safeway (Standard Oil of New Jersey)
4. Trading Post -- under construction --  $1\frac{1}{2}$  million dollars.

I would point out in connection with this list of monopolies that Safeway is controlled by the Standard Oil Company of New Jersey. That is why they put cigarettes down and increased the price of gasoline. They had nothing to lose when they used a commodity such as cigarettes.

And then, in connection with item No. 4 which refers to Trading Post, which is under construction at a cost of a million and a half dollars; well, there must be an awful big profit in foods to allow monopolies to increase their buildings.

Then, for your information, I have another little item I should like to read. It is as follows:

The following is further statistical data gathered since the submission of our brief to Ottawa and which we present





hereunder as further proof of "loss leaders" in existence.

Items listed were presented by Safeway and advertised on the date of June 14. We attach substantiating evidence in the form of invoices in order that comparison may be made.

	<u>Safeway Price to Customer</u>	<u>Cost Price to Merchant</u>
Watermelon	5¢ per lb.	5¢ per lb.
Margarine	2 lbs. for 63¢	31¢ per lb.
Lynn Valley Peaches	2 cans for 33¢	16½¢ per can
Rhubarb	4¢ per lb.	4¢ per lb.
Bologna	29¢ per lb.	31¢ per lb.
Corned Beef	2 cans for 49¢	32½¢ per can

These are facts. I am not discriminating against Safeway or B & K or Supervalu Stores, but the data of that last case is submitted for your approval and for your information. I am offering also the advertisements and invoices; they are all included and you can take them back with you.

THE CHAIRMAN: Before we proceed further perhaps we should make a note of the material that has been handed to us. The documents are as follows: MacDonald's Consolidated Limited, price list, stated at the bottom to be effective June 26, 1954; the second is an invoice of the Swift Canadian Company of June 14, 1954; the next is a document of A. P. Slade, Victoria Limited, an invoice of June 12, and the next is an invoice



of W. H. Malkin Company dated June 14, 1954. Then we have several pages taken from the Victoria Daily Times of Monday, June 14, 1954, containing on some of these pages advertisements of groceries. These are separate and can be filed and marked as Exhibit VIC-1.

--- EXHIBIT NO. VIC-1: Price list, MacDonald's Consolidated Limited, June 26, 1954; invoice, Swift Canadian Company, June 19, 1954; invoice, A. P. Slade, Victoria, June 12; invoice, W. H. Malkin Company, June 14, 1954; also attached several pages from Victoria Daily Times, Monday, June 14, 1954.

THE CHAIRMAN: You may proceed, Mr. Palmer.

MR. PALMER: In dealing with briefs we all know that it is very nice to present briefs and let the powers in office know what is taking place.

The small independent merchants for years have strived to keep families supplied with groceries at as low a cost as possible. We have supplied them with charge accounts, which the large monopolies do not do. They do not have to, because they have the capital to say, "Here it is; if you want it you can have it. If you don't want it, you don't have to take it."

The little man is without capital to any great extent; and our organization, being in its infancy, we have not made as great strides as might have been possible due to the hardships of the large monopolies and the curtailment of business at various angles.



To deal with the milk question, which has been a bone of contention in Victoria, we have to take the facts as presented to us, as we are not lawyers, or adapted to all these circumstances which tie us into our way of life.

The Minimum Loss Act for commodities, chapter 219, is an act respecting loss on commodities, as it has been put out by the provincial cabinet of British Columbia. I have that law before me, and it states:

No retailer shall offer for sale, sell or keep for sale any grocery products at a profit of less than 5 per cent.

If we had the capital to contend with these facts and figures that the law has set down, we could prosecute the people who sell at less than 5 per cent. But, being that we are not lawyers, as I said before, we are not in that position to take these cases to court as we see them do their advertising. We are just little Joes trying to get along in life, to please the housewives. Some of our items perhaps are a cent higher than the large monopolies because we have not got the volume. We have not got the capital to expand. Nor have we been given the best spots in the city to create these large outlets for foods.

We are harnessed to capital, as so defined. But, due to our incapability to form great companies like Safeway or B & K Economy Stores and Supervalu, and not having large



amounts of money at our fingertips, we cannot do it.

But the powers that be in government should restrict these people from selling merchandise, and should enforce the law if those people sell at anything less than 5 per cent, as is quoted in the British Columbia Act.

If you take in your refrigeration, your deliveries and your bags, then it is clear that we are selling milk at a loss, when you only get one cent a quart. And that is one of the conditions in Victoria we would like to have improved. They get two cents a quart in Vancouver for milk. And they claim, of course, that there is a hardship in sending feed to Victoria and that that puts the price of milk up.

The dairies will not budge. When I phone them and ask them what's cooking they say, "Well, the war is still on. You can fight it out." Then, when I ask them about ice cream they say, "Well, you little fellows can do the same as the big fellows do." How can we do that? It is simply preposterous to believe that people in business like that would make such a statement -- that we can do the same as the big fellows do.

The majority of independent merchants regardless of where you go -- regardless of what city you go to -- are just about the same. I have travelled from coast to coast and I have seen a lot of them.





I was raised in Montreal where a lot of small independent merchants there are trying to make the same kind of existence against the big capital, the big companies like Dominion Stores, A & P and Steinberg's, and they are having the same trouble down there -- but not quite so substantially or so vastly -- in connection with a commodity known as cigarettes.

There is a great deal of experienced thought in independent merchants who travel like that, and who see the merchants in these different fields. But I would like the powers here to be thanked once more by our Association, as I represent them at this hearing. I hope in the near future that you will get together with the Combines Investigation Board in connection with this <sup>been</sup> Act that has/promised in Ottawa -- the anti-price fixing law -- which was adopted in 1951, and work in harmony with the manufacturers, especially the manufacturers of cigarettes, so that they will be priced and have the prices stamped on them so that no monopoly can cut the underground out of the small independent merchant.

That is what I am going to fight for as long as I am able to. I have lost my teeth over one effort, and I am on my sixth set, but I am still able to smile, and when Mrs. Jones or Mrs. Brown come into my store I am quite able to please them, even without my teeth in. Thank you very much.



THE CHAIRMAN: It sounds as if you would be able to get along anyway.

MR. PALMER: I always do.

THE CHAIRMAN: Then, I would like to ask if either Mr. Whitney or Mr. Patton wish to add anything at this stage.

MR. WHITNEY: I wish to say only a word or two about cigarettes. Before the government stopped the cigarette companies from putting the price on cigarettes we were getting along nicely. Cigarettes are a big issue with us. We all carry a grocery and a confectionery licence. Under the confectionery licence we stay open evenings, holidays and Sundays. The general public come to us for cigarettes and tobacco. But by the big chain stores cutting the price of cigarettes down it is cutting our profits down.

Cigarettes are a big issue with us. It represents big volume so far as we are concerned, and we would like to see the manufacturer be able to put the price back on a package of cigarettes.

THE CHAIRMAN: Thank you, Mr. Whitney. Do you wish to add anything, Mr. Patton?

MR. PATTON: No, Mr. Chairman, I think everything has been pretty well covered.

THE CHAIRMAN: Thank you. Then, Mr. Gerin-Lajoie may have some questions to ask.

MR. GERIN-LAJOIE: First of all I should like to ask Mr. Palmer to explain about these



exhibits which were filed. Would you explain what each document is, and what reference it has to the brief submitted.

MR. PALMER: The first invoice on the top of this group is handed to me and states: "Palmers Grocery sold, on April 17; 30 dozen eggs at 49 cents." It is advertised ---

MR. WHITELEY: Is that "Sold to Palmers Grocery", do you say?

MR. PALMER: Sold to Palmers Grocery.

THE CHAIRMAN: By whom?

MR. PALMER: By Northwestern Creamery. It is invoiced at 49 cents a dozen at a cost of \$14.70. It is advertised in the daily paper: "Breakfast Gem grade A large eggs, hard boiled and coloured; come for the children, cartons 2 dozen for 99 cents." Now, I did not employ in my brief all the facts and figures of these eggs. Why? Because it would take a lawyer to go into all these facts and figures.

THE CHAIRMAN : All we want is to identify these documents with the brief so that we will know when we read the brief which of these documents you are referring to in each paragraph. That is all we have in mind now. We are not asking at the moment for a complete explanation of each document.

MR. GERIN-LAJOIE: The bill referred to first may be filed as Exhibit ---

MR. PALMER: That is item No. 4 on your



brief.

THE CHAIRMAN: This comes under item No. 4 in the brief, does it?

MR. PALMER: Yes, No. 4 in the brief.

THE CHAIRMAN: An invoice from the Northwestern Creamery to Palmers Grocery. Oh, is this the one that the brief says is Exhibit A?

MR. PALMER: Yes.

THE CHAIRMAN: "C" is the invoice. This is the invoice referred to in paragraph 4 on page 3 of the brief as Exhibit "C", and saying, "We paid 49 cents".

MR. PALMER: That is right.

THE CHAIRMAN: Then, that document, which we have just described, will be Exhibit VIC-2.

---EXHIBIT VIC-2 -- Invoice referred to in brief of Mr. Palmer as Exhibit "C".

MR. GERIN-LAJOIE: And here are a number of newspaper advertisements stapled together. I believe they all relate to the price of eggs.

THE CHAIRMAN: Do all of them relate to eggs?

MR. GERIN-LAJOIE: Yes, apparently. Then, with regard to these newspaper clippings, are they all from newspapers of the same date?

MR. PALMER: Yes, they are.

THE CHAIRMAN: And they are all from the Daily Colonist?

MR. PALMER: They are Colonist and Times, combined.





THE CHAIRMAN: Then, newspaper clippings from the Victoria Daily Colonist of April 13 and the Daily Times of April 13, showing advertisements relating to the price of eggs. I believe all of these are stapled together and they are marked with the red figure 4, with a circle around it. I believe they are all marked in that way. These will form the next exhibit.

--- EXHIBIT VIC-3 -- Newspaper clippings, Daily Colonist and Daily Times, April 13; egg prices.

MR. GERIN-LAJOIE: Would you explain what this blue document is which has the number 5 on it and is entitled, "Kraft Foods Limited, price list for the retail trade".

MR. PALMER: Yes, gladly. The item No. 5 is the article in the brief giving the powers that be a greater lead to the price of mayonnaise at 32 cents, that we quoted, and that was sold as a loss leader. That is why the price list was sent in, to give you that adequate information. One dozen in a case,  $34\frac{1}{2}$  pounds, 32-ounce Miracle Whip; they have it listed at one price as, up to 200 pounds, \$9.10; and then, if you buy 200 pounds it is \$8.80. And, carload lots, 2,000 pounds and over, \$8.65.

At that particular date they had come out with a change, and these changes in prices took effect overnight regardless of the stock you had on hand. The reason this was submitted was to show a clarification of the different set-ups



in price. The first is for one case and up; the next is for 200 pounds and up, and then the next is for carload lots and up. And that is why the monopolies sell one article at 75 cents. Well, we cannot afford to buy at their figure, as advertised in the daily papers at 75 cents. The proof is in the pudding, gentlemen.

THE CHAIRMAN: Or in the mayonnaise. Then, just to be quite clear about this; in paragraph 5 at page 3 of the brief you speak about advertising, about which you have just spoken again, in the daily papers, quoting Miracle Whip, a 32-ounce jar at 75 cents. The brief then goes on to say that the cost of this commodity on that date was \$8.85. Is that the cost per dozen to the independent dealers?

MR. PALMER: Yes, that is right.

THE CHAIRMAN: That is what that means, the cost per dozen to the independent retailer?

MR. PALMER: Yes, \$8.85.

THE CHAIRMAN: Then, we have before us a price list of two pages dated July 13, 1953 by Kraft Foods Limited entitled, "Price list for the retail trade"; and two clippings from newspapers, one from the Daily Colonist of Victoria of May 27, 1954; and what is the other one, do you know? Is the other from the Colonist, also?

MR. PALMER: I cannot be sure, if there is no date on it.

THE CHAIRMAN: The other one has on it



a statement that Supervalu Stores will remain closed all day on Monday, May 24. It is all this year, though, is it not?

MR. PALMER: Yes, this year.

THE CHAIRMAN: So that we may take it that it is an issue of some time shortly before May 24, 1954?

MR. PALMER: Yes.

THE CHAIRMAN: The first two of these documents have the figure 5 in red, with a red circle around it; and the advertisement from the Daily Colonist has the figure 3 on it in red, with a red circle around it. These documents just described will be filed as the next exhibit.

---EXHIBIT VIC-4 -- Price list, Kraft Foods Limited, July 13, 1953; two newspaper clippings, one dated May 27, 1954 and the other undated, but said to have appeared before May 24, 1954.

MR. GERIN-LAJOIE: Then, you are filing an invoice bearing the number 6 from MacDonald's Consolidated Limited to Palmers Grocery under date of May 11, 1954; together with a newspaper clipping from the Victoria Daily Times, and another one which does not bear the name of the paper.

MR. PALMER: This is the Colonist, and this is the Time.

MR. GERIN-LAJOIE: Are they both from May 12, 1954?

MR. PALMER: Yes, they are.



MR. GERIN-LAJOIE: And all these documents refer to the price of what?

MR. PALMER: Canadian pork luncheon meat.

THE CHAIRMAN: Then, the documents just described, all of which have the figure 6 in red, with a red circle, will be the next exhibit.

--- EXHIBIT VIC-5 -- Invoice, MacDonald's Consolidated Limited to Palmers Grocery, May 11, 1954; also two newspaper clippings from the Victoria Colonist and the Victoria Times, May 12, 1954.

MR. GERIN-LAJOIE: And these documents all refer to paragraph 6 of page 3 of the brief, Canadian pork luncheon meat?

MR. PALMER: Yes.

MR. GERIN-LAJOIE: We now have another set of documents including first, an invoice from Burns & Company to Widow's Park Grocery under date of May 21, 1954.

MR. PALMER: Yes.

MR. GERIN-LAJOIE: And these newspaper clippings --

MR. PALMER: That is from the Colonist and that is from the Times.

MR. GERIN-LAJOIE: The small square one is from the Times and the long one is from the Daily Colonist?

MR. PALMER: Yes.

MR. GERIN-LAJOIE: And these are taken





from issues of those papers on May 20, 1954.

These documents refer to what?

MR. PALMER: The weiners in question where the merchant bought at 36 cents a pound and the chain monopolies sold it at two pounds for 65 cents, as submitted in the press, and 24 which constitutes approximately two pounds for 59 cents.

MR. GERIN-IAJOIE: All these documents are referred to in paragraph 7 at page 3 of the brief?

MR. PALMER: Yes.

THE CHAIRMAN: These documents just described will be the next exhibit.

---EXHIBIT VIC-6: Invoice, Burns & Company to Widow's Park Grocery, May 21, 1954; also two newspaper clippings from the Colonist and the Times, May 20, 1954.

MR. GERIN-IAJOIE: Do you wish to file this additional newspaper clipping you now show me?

MR. PALMER: It was sent in to the Restrictive Trade Practices Commission. It was put in the daily press in Victoria on Friday, October 8, 1953, as one of the points of co-operative action which was asked by the merchants. It states:

A strong plea for small merchants to act together in order to improve their bargaining position was made Thursday night in the monthly meeting of the great Victoria Independent Merchants Co-Operative Association by W. Palmer, association president.



It was only an article put in the press to enlighten our members on what they should do for their own benefit, and to work together in better harmony.

MR. GERIN-LAJOIE: Is this document referred to in your brief?

MR. PALMER: No, it is not entered in the brief or any of the discussions. It was just a clipping out of the papers which was sent to the Restrictive Trade Practices Commission in Ottawa for their story leading up to the event of loss leaders, to show that we are active as an organization.

MR. GERIN-LAJOIE: This is a newspaper clipping from the Daily Colonist of Victoria of October 9, 1953 and entitled: Co-operative Action by Merchants Urged.

THE CHAIRMAN: The document just described will be marked as the next exhibit.

---VIC

---EXHIBIT VIC-7: Newspaper clipping, Daily Colonist October 9, 1953, Co-operative Action by Merchants Urged.

MR. GERIN-LAJOIE: I have a few questions to ask you, Mr. Palmer, if you would care to give us this additional information.

MR. PALMER: Gladly, if I am able to.

MR. GERIN-LAJOIE: First of all, would you explain what your association is. I understand it is a group of merchants. What type of merchants, and in what field?



MR. PALMER: In food, mostly. We are small owners of small establishments. Some are confectioners, and some are grocers. We were embodied together in 1948. This was brought about by the hardships of one group trying to fasten us down to certain hours of business. We believe in the democratic rights of the people of this country. We believe that as small independent owners we should be able to adopt our own hours, because we were not conflicting with the labour laws as set down by this province, and we believe that we should be able to work our hours according to what we see fit.

MR. GERIN-LAJOIE: Would you explain what are the purposes of your organization. Do I understand the first purpose was, originally, in connection with the matter of business hours?

MR. PALMER: Well, in our first group association, the purpose of acting together as members of the association was to protect our rights under the democratic way of living, and to work as many hours as we saw fit. And we achieved that success by getting the by-law amended to give us that right to sell groceries at any hours.

MR. GERIN-LAJOIE: Then, can you say if you have any other activities?

MR. PALMER: We have.

MR. GERIN-LAJOIE: You have the word "co-operative" in the name of your association.



MR. PALMER: Right.

MR. GERIN-IAJOIE: What does that mean, in your case?

MR. PALMER: The memorandum indicates that it is an association of independent merchants, acting as a co-operative association. It says:

The name of the association is the Independent Merchants Co-Operative Association; registered office of the association will be situated at 1198 Yates Street, Victoria, Province of British Columbia. The objects for which the association is formed are: To carry on the business of storekeepers in all its branches, and particularly to buy, sell, manufacture and deal in goods, consumable articles, edibles and foods of all kinds, both wholesale and retail, and to transact agency business; to carry on the business of merchants and traders, importers, exporters, grocers, butchers, green grocers, provision dealers, dairymen, bakers, confectioners and tobacconists ---

MR. GERIN-IAJOIE: No, if you will allow me to interrupt; in practice, what purposes do you follow or do you have? Do you act as an agency for buying in common?

MR. PALMER: No, we have not entered into that field yet. We registered under the Act by the provincial cabinet and paid our fees to be





registered under that Act, to act in any way we saw fit, or when our organization became strong enough, so that we could enter into these articles that I have read out, if we saw fit to do so. That was our only solution toward buying in quantities, just the same as the monopolies do.

MR. GERIN-LAJOIE: Up to now you have not bought in common from the wholesalers or manufacturers?

MR. PALMER: No, we only deal direct from the wholesalers.

MR. GERIN-LAJOIE: Could you tell us if some members of your organization are grouped together, or with some other retailers in the province of British Columbia, for the purpose of buying together from manufacturers?

MR. PALMER: To a point, we all are. Under the heading of independent merchants we do obtain special privileges belonging to an organization, since the wholesalers recognize in the province of British Columbia organizations set up in any field.

If you belong to a group who get certain concessions we, as independent merchants -- the Independent Merchants Co-Operative Association -- do get certain benefits from the wholesalers, from any one you wish to name, MacDonald's, Malkin's -- they all give us certain concessions because we are a body, providing they serve our group.

THE CHAIRMAN: That is, even though each



store owner buys separately, you get concessions, some concessions in price, because each member of the group also deals with some wholesaler?

MR. PALMER: That is right -- in groups -- they are in groups. And the companies recognize our group and they give us a discount of  $2\frac{1}{2}$  per cent on biscuits, because we belong to that group, which is registered under the provincial cabinet.

THE CHAIRMAN: But, in order to get that concession, all members of your group have to buy those biscuits; is that correct?

MR. PALMER: Yes.

MR. GERIN-LAJOIE: Taking a look at Exhibit VIC-4, which is a price list of Kraft Foods, I notice that there are three different sets of prices according to the volume purchased. Do you mean that the members of your group got a price lower than the prices mentioned here?

MR. PALMER: No. In connection with this matter, certain commodities, if you buy from the wholesaler at this volume -- that is, if you buy a one-case lot you pay this price for it. Then, if you buy 200 pounds or over you get this price; and if you buy 2,000 pounds or over, up to a carload, 9,999 pounds, you get this price.

MR. GERIN-LAJOIE: This means of course, if I understand it correctly, that if you were to join together a number of retailers to buy a carload, for instance, you would get a lower price?



MR. PALMER: Yes.

MR. GERIN-LAJOIE: Now, looking at some parts of your brief, Mr. Palmer, would you explain first of all what you mean by monopolies, when you refer to monopolies in the second paragraph?

MR. PALMER: The second paragraph?

MR. GERIN-LAJOIE: You refer to these large monopolies expanding in a city the size of Victoria. What is a monopoly?

MR. PALMER: A monopoly is a word such as a cartel. Some people have the power to do great things, whereas the independent, like myself, the independent merchant, has not got that control over controlling cost of things.

They are not listed as a monopoly. But, with their unrestricted revenue and the large amounts of money, where people buy in mass quantities, they are termed, according to union principles, a cartel or a monopoly, which means the same thing. They have control.

MR. GERIN-LAJOIE: Well then, in this case you mean, when you use the word "monopoly" only a large organization having large buying power?

MR. PALMER: Yes.

MR. GERIN-LAJOIE: Now, in paragraph 3 you suggest that the government should tax all chain outlets according to population in the various cities. First of all, would you explain why you suggest that the government should tax chain stores and not other retailers?



MR. PALMER: Well, the chain stores have the power and the enticement, by building large grocery stores -- they have the power to entice people to buy there.

MR. GERIN-LAJOIE: What do you mean by "power"?

MR. PALMER: The power to advertise.

MR. GERIN-LAJOIE: Do you mean money?

MR. PALMER: Money, yes -- the same thing -- power is money. In phases of our language we use it for the same purpose. Power and money guide their destiny and they are able to do more than the small man, who is without those two advantages. And I might say that I am not a lawyer, nor are any of us lawyers well versed in all the commodities of the market.

I could go on to say this. You have referred to the article where I ask for this tax. And you ask why should I ask the government to tax the chain stores according to population in the various cities. Well, it is a lesson that was taken from Portland, Oregon, when they wanted the chain stores to give the municipalities more money, and they taxed the chain stores according to the population of the city.

Thus, one chain store paid the tax, the same as the first independent merchant's store. Then the next store -- well, he had the power and he had a monopoly on the money, so he built another large structure to entice the public into the store. He was taxed accordingly at a higher figure.





MR. GERIN-LAJOIE: Do you mean that each individual store of a chain should be taxed as an independent store?

MR. PALMER: No, I mean that the first one should be taxed as an independent store and that the next one should be taxed an increased tax, and the third one should be increased in taxation, again.

MR. GERIN-LAJOIE: And you make this suggestion just because they have more money?

MR. PALMER: No, not only because they have more money, but because they derive more profit from the kind of business that they do.

MR. GERIN-LAJOIE: But if they do derive more profit, I suppose there is a tax on those profits, the corporation tax, as well as the tax on individuals; so they would be paying more money to the government just the same?

MR. PALMER: To a point, yes. Your point is well taken with respect to hidden taxes. The small, independent merchant does not see those.

MR. GERIN-LAJOIE: Do you suggest, therefore, that they should pay a special tax?

MR. PALMER: On account of the large monopolies being able to build these massive structures and go into the field and kill the small man in business -- just as the MacQuarrie report said.

MR. GERIN-LAJOIE: Does this mean that you propose to put a tax on capital, just because



they have money and power? Do you suggest that they should be taxed, and that this would mean a tax on capital?

MR. PALMER: Capital, according to their structure, where the independent merchant is not able to do that.

MR. GERIN-IAJOIE: By that way of doing business, where they are building large structures and giving lower prices to the public, do you not think that is for the benefit of the public generally, and that there should be no reason to tax enterprise -- that is, tax it specially -- when it is rendering a service for the benefit of the public?

MR. PALMER: Private enterprise, yes.

MR. GERIN-IAJOIE: Do you mean they should be taxed specially?

MR. PALMER: Not private enterprise. But when you are dealing with monopolies or cartels you are not dealing with private enterprise. We want to keep private enterprise alive. But by the large monopolies creating all these massive structures, if they are allowed to continue the small man -- just as the MacQuarrie report said -- will be out.

MR. GERIN-IAJOIE: How would you describe them, if you do not call them private enterprise?

MR. PALMER: Private enterprise -- well, private enterprise would be a man like myself, with one small cubbyhole or a little two-bit store, struggling along, trying to get on in business.



That is what we really describe as private enterprise. But a man with two or three chain stores -- well, you would not describe him as private enterprise.

MR. GERIN-LAJOIE: It is common to refer to private and to public enterprise as being different procedures. What you mean by private enterprise is a small business?

MR. PALMER: Yes, a small business, like myself.

MR. GERIN-LAJOIE: Now, this tax you propose, would it have a growing rate, if I may say so, with each additional store in the chain? Would the rate be higher on the third than on the second?

MR. PALMER: Yes.

MR. GERIN-LAJOIE: And higher on the fourth than on the third?

MR. PALMER: Yes.

MR. GERIN-LAJOIE: And how would it work in proportion to the population? You are referring to the population of a city, I suppose.

MR. PALMER: Yes.

MR. GERIN-LAJOIE: And how could it be proportioned to the population of the city, and grow according to the number of stores in the chain?

MR. PALMER: Well, you have to take events as you find them. In dealing with population of cities we know that in t ria, British



Columbia, it has increased from 65,000 in eight years to a population of 128,000.

Now, since the increase in population has come to Victoria we have noticed that these large structures are more and more in demand. Naturally, they have appeared, because the little man cannot cope with this. But if the little man was allowed some privileges from the government to build on a lend-lease base, build structures and operate just as these people do, he could do it.

MR. GERIN-LAJOIE: I think you are dealing with a different point. I am asking if you are proposing that the tax should be higher -- that the rate of the tax should be higher -- when the number of stores is higher. The rate would be higher for the tenth store than it would be for the fifth, is that correct?

MR. PALMER: Yes, that is my motive in putting that in the brief.

MR. GERIN-LAJOIE: And, apart from that, it would grow with the population?

MR. PALMER: Yes; the more stores they build and the larger the population, the more tax would be applied.

THE CHAIRMAN: I think, Mr. Gerin-Lajoie that we have Mr. Palmer's idea before us. There are certain complications which I think you have in mind and which might make it more difficult. For instance, one chain store might build one, two, three or four very large stores, whereas another





might build ten or fifteen comparatively small ones. Then, the three or four very large ones might do a great deal more business than the ten or fifteen smaller ones. So that the taxation would not, I suggest, work out very well if it was strictly on the basis of the number of stores.

MR. PALMER: No, but I think you can see my plan.

THE CHAIRMAN: Yes, we have the idea you have in mind.

MR. PALMER: It is not to discriminate or hurt anybody with taxation. Because, we, the independent merchants, or anybody sitting here, are taxed enough now as it is. But that is not your business; it is a provincial matter.

MR. GERIN-LAJOE: If you propose to tax in the same way local chains and national chains -- do you propose to tax them in the same way?

MR. PALMER: I am only interested in the one city where I am residing. I have no part in other parts of the province -- or national.

MR. GERIN-LAJOE: But let us suppose that in your city you have a national chain and that you also have a local chain, each of which is operating ten stores in your region. In one case ten stores are those of the national chain ---

MR. PALMER: Yes.

MR. GERIN-LAJOE: --- having one hundred stores. Do you have in mind taxing both in the same way?



MR. PALMER: Yes, there would be no discrimination. If they are both ten stores you would have to figure on their business assessment which is set by the municipal head. He would have to be the deciding factor on that.

MR. GERIN-IAJOIE: Looking at the first paragraph in your brief which refers to cigarettes, may I ask what you have in mind when you refer to a reasonable profit on cigarettes to be able to meet overhead expenses?

MR. PALMER: Well, we will come to your question immediately and cut it off short. If you were selling cigarettes alone in a store today and selling them at the prices I have here in my brief you could not make a living. You would have to fold up. If we did not have groceries and side-lines of other commodities we could not do it.

And there are dozens of small stores in Victoria, as there are elsewhere, that are selling cigarettes and magazines and little knick-knacks, and they have made a fair profit -- so as to be able to live without hurting their living habits. And in their social life they have been able to deal quite openly and quite nice and quite plainly. But when you have to keep stride with the monopolies and the cartels which we have, you cannot make a living on that kind of profit.

MR. GERIN-IAJOIE: Do you mean that the chain stores selling cigarettes have a markup or



profit which is lower than their overhead on cigarettes?

MR. PALMER: Well, now, you are dealing with a subject that I have not gone into because I do not have access to the chains or to Safeway or to any other invoices. I have access only to my own invoices. But, when you take a chain, they are trying to sell a carton of cigarettes at \$2.95. Well, a person who buys a carton of cigarettes has quite a number left over and he has enough to do him for quite a while. He might be going to the chain store to buy his cigarettes and then go into the independent store to get his milk and bread. Do you see what I am getting at?

102) R. GERIN-LAJOLIE: Yes, but my question is this; do you suggest that the markup on cigarettes in general, in a chain store, is lower than it should be on a normal business basis? Because I have in mind information collected by the Director of Investigation and Research and as set out in his green book at pages 219 and 232 referring to the situation in Vancouver particularly. And, apparently, according to the information collected the markup on cigarettes by chain stores would be about 7 per cent, on the retail side alone.

MR. PALMER: Yes.

MR. GERIN-LAJOLIE: An additional 2 per cent is calculated for the wholesale side of the chain stores. That is, apparently, a higher



markup than the chain stores have on many other articles.

MR. PALMER: Quite true. But cigarettes are always in demand and always fast moving; and if the manufacturers and the government do not work in harmony the government will lose a lot of its profit on cigarettes because where you have the independent stores operating you have a vastly greater number of them than you have the chain stores.

MR. GERIN-LAJOIE: Yes, Mr. Palmer, but do you suggest that cigarettes are sold as a loss leader in chain stores?

MR. PALMER: Yes.

MR. GERIN-LAJOIE: Do you mean they do not make enough money on the sale of cigarettes to cover their overhead expenses in that field?

MR. PALMER: Not if they are selling cigarettes alone, no.

MR. GERIN-LAJOIE: Of course not; but do you suggest that the overhead of a store selling many items is not lower on every item, every individual item, than it would be if you had only one item in that store?

MR. PALMER: Your point is well taken on the basis of protecting the price of cigarettes. We like to see cigarettes like they were in the old days, at the time when I born -- and I was only knee-high to a grasshopper -- five cents a package. However, at the present time, with present day





living conditions, they cannot do that because of the price of labour. The price of labour today has to be looked at and keenly met. But the manufacturers, when they are meeting price for price, cannot use cigarettes for a come-on or a boot-around, if they want to make a livinghood.

MR. GERIN-LAJOIE: Mr. Palmer, if cigarettes can be sold cheaper in a certain type of store, cheaper for the consumer, without any loss to the retailer, do you think there should be any curtailment of that policy or practice?

MR. PALMER: Well, that is only in your opinion. You are asking me that question.

MR. GERIN-LAJOIE: That is the question I am putting to you.

THE CHAIRMAN: Mr. Palmer, two or three times you have said that Mr. Gerin-Lajoie's point has been well taken. So far as the Commission is concerned, Mr. Gerin-Lajoie is not making any points; he is just asking you questions and asking you to give your opinion.

MR. PALMER: Well, my opinion is this, that cigarettes --if you want me to put the onus right on it -- cigarettes should be priced so that there would be no cut-pricing on them.

MR. GERIN-LAJOIE: Cut pricing -- on what prices?

MR. PALMER: On cigarettes.

MR. GERIN-LAJOIE: How will it be fixed or determined whether they are cut or not.



MR. PALMER: That would be dealt with by the manufacturer and the government, because the manufacturer is paying out to manufacture those cigarettes. They would have to give some consideration to what price should be stamped on them.

MR. GERIN-IAJOIE: Mr. Palmer, I am taking this as a background, that there is at present a law against price maintenance by the wholesaler or the manufacturer. Now, the Commission is trying to find out, according to its mandate, whether there are practices, since the changing of the law particularly -- but not exclusively -- which are not for the benefit of the public, particularly in connection with loss leaders, whether they are not beneficial.

I am just trying to find out what you have in mind when you say that cigarettes should not be sold at a cut price. What do you mean by a cut price? At the present time, you see, there are no prices fixed at retail on cigarettes.

MR. PALMER: By various prices. When a commodity is set at various prices today, which is against the anti-price fixing law as set by the government in 1951, then naturally everybody has the right to cut prices, according to the way they desire.

MR. GERIN-IAJOIE: Do you mean to fix prices as they wish to fix them?

MR. PALMER: Yes, but we do harm to the



other merchants.

MR. GERIN-LAJOIE: Is that not the practice in almost every field? And it has been the practice before the present law, also, in many fields.

MR. PALMER: Yes, before 1951 cigarettes were never cut. Cigarettes were offered at one level right across Canada.

MR. GERIN-LAJOIE: But there were varying prices in different fields. For instance, if you bought an overcoat you would not be sure that it would be the same price in one store as in another store?

MR. PALMER: Yes, but you would be getting a different quality.

MR. GERIN-LAJOIE: Possibly, but there was no price maintenance on quite a number of items.

MR. PALMER: That is right. I can see your point.

MR. GERIN-LAJOIE: I am asking why there should be price fixing on cigarettes when you would not have it on other items.

MR. PALMER: To protect the merchant who is only selling cigarettes, when he has nothing else for a livelihood.

MR. GERIN-LAJOIE: I see your point, and I do not wish to appear inhuman so far as the seller of cigarettes is concerned. But do you think it is for the benefit of Canada generally that the price should be fixed to protect the



cigarette retailer?

MR. PALMER: Yes, I do.

MR. GERIN-LAJOIE: Can you explain why, if in doing that you have a higher price for the consumer? You see, we have certain facts to reconcile; we must look after the interests of everyone so far as possible; and that is why I am taking this position with you. I am not just asking questions from the other point of view.

MR. PALMER: All right. I am only human. The fact remains that cigarettes, as I have just said, are sold by some merchants only -- along with magazines and small items. If those merchants could not get a reasonable profit -- let us say a merchant of that kind should make 4 cents a package, on a package of cigarettes, which is not asking too much. If you wish to smoke a cigarette, why should you not be able to pay 4 cents for his livinghood? We all here are striving for the almighty dollar and our livinghood.

Why should not the poor merchant who is striving for his livinghood make at least 4 cents a package on cigarettes? If the government in power takes away that livinghood and gives cigarettes a kicking-around, then naturally it is the poor merchant who will suffer. I maintain that a man should be able to make 4 cents a package on cigarettes, and nobody should have the right to cut his livinghood away from him and cut that down to 2 cents a package. That is my personal opinion





which you have asked me for.

THE CHAIRMAN: Then, Mr. Palmer, I take it that in your view when cigarettes are at about their present cost price to the dealer, a fair margin of profit for him would be 4 cents on a package of twenty; is that correct?

MR. PALMER: Yes.

THE CHAIRMAN: And that would be a reasonable profit?

MR. PALMER: Yes, a reasonable profit for a merchant.

THE CHAIRMAN: And that less than 4 cents would be unreasonable?

MR. PALMER: It would be unreasonable, yes.

THE CHAIRMAN: And more than that would be perhaps unreasonable, too; is that right?

MR. PALMER: Yes, that is right.

MR. GERIN-IAJOIE: Then, Mr. Palmer, I would like to have something straightened out. I am not sure if I understand correctly what is said on the second page of your brief. You will correct me if I am wrong. I understand that a farmer selling milk for consumption may be paid two different prices -- \$6.10 on the first lot and then only \$2.70 on the second lot of 400 pounds?

MR. PALMER: That is right.

MR. GERIN-IAJOIE: You are sure about that, are you?



MR. PALMER: I could not swear to it on the Bible, or in court, because I could not obtain any concrete evidence. I tried my best to do it, to get some farmers to take a stand, and to stand beside me, and to quote what they were receiving, and how much; but none of them would.

THE CHAIRMAN: Mr. Palmer, perhaps we can get fairly close to it. From what is stated in your brief I would assume that the practice among the dairies here is much the same as it is in some other places, where each farmer who supplies milk to them is placed on a quota.

MR. PALMER: Yes.

THE CHAIRMAN: And that up to that amount, of that quota, the farmer will get a certain price?

MR. PALMER: Yes.

THE CHAIRMAN: He must supply that quota, though, or he is in difficulty with his renewal of his contract in the next year?

MR. PALMER: That is right.

THE CHAIRMAN: Normally, therefore, he has some extra milk -- at least during most of the year -- in order to be certain that he will be able to supply his quota. So that he usually supplies more than his quota, and delivers more than his quota; and on that surplus amount over the quota he gets a substantially lower price than he does for the amount up to the quota; is that correct?

MR. PALMER: That is correct, yes. Of



course, that lower priced milk he has there is extra fluid milk that is supposed to go into ice cream, and other manufactured products of the dairy industry. But I am not well versed on that, because I could not obtain absolutely correct or definite information so as to answer questions sensibly or honestly. But these are only quotations on these prices of milk. I have tried to get the independent merchants 2 cents a quart, and to this date I have failed.

I have appealed to the provincial cabinet. I appeared before the milk board and we were promised that we would get the same concession as Vancouver on milk, but to date I have not been able to do a thing. When I call the dairy -- When are we going to get our 2 cents a quart, they just say, "The war is still on. There is no concession given on milk."

We sell our service, and we suggest that we should charge 25 cents a quart. But then if we charged 25 cents a quart in our stores -- bingo -- Safeway would open their dairy plant and they would take the cream of the crop again, and that would just be another leader for them.

MR. GERIN-IAJOIE: Do I understand that in the province of British Columbia there is a provincial milk board fixing the price of milk?

MR. PALMER: Yes.

MR. GERIN-IAJOIE: So that, having that in mind, do you suggest that retail price



maintenance would better your present situation, so far as you are concerned?

MR. PALMER: Well, a price maintained on milk all around would be a better deal, providing we can show an ample profit for the handling of that milk.

MR. GERIN-LAJOLE: But, for instance, if the present federal law were abolished, and we were to return to the situation as it was before December, 1951 you would still have a provincial board fixing the price of milk?

MR. PALMER: Yes.

MR. GERIN-LAJOLE: I wonder if you have any particular reason for referring ---

MR. WHITELEY: Just a moment; does the provincial board fix the milk price at all levels?

MR. PALMER: In British Columbia, yes.

MR. WHITELEY: Does it fix the retail price as well?

MR. PALMER: Nobody fixes the retail price today. You could sell at 24 or 25 or 26 cents a quart. But they are distributing milk to the door at 24 cents. If we were to increase our fluid milk price in the store, for the woman coming into our store, we would stop her from coming in.

THE CHAIRMAN: When you speak of the government board fixing the price, that statement relates only to the price paid the farmer?

MR. PALMER: That is right.





THE CHAIRMAN: And from there on there is free competition, so far as the government is concerned?

MR. PALMER: Yes, so far as the government is concerned.

MR. GERIN-LAJOIE: I wonder if you have anything more in mind when, at page 2 of your brief, you refer to Ontario law as well as British Columbia law?

MR. PALMER: Yes; according to the Crown law, in Toronto in 1937 they did have a similar law as British Columbia has here. But I am not quite sure of their percentage.

MR. GERIN-LAJOIE: That would not affect the situation in British Columbia, would it?

MR. PALMER: No, but it is a similar law.

MR. GERIN-LAJOIE: It is just for the purpose of comparison that you have mentioned it here?

MR. PALMER: Yes.

MR. GERIN-LAJOIE: Now, I wonder if there is a small misunderstanding at page 2 of your brief. You mention this -- "As the MacQuarrie committee stated, large chain stores will eventually push the small man out." If I look at page 60 of the MacQuarrie report, the top paragraph: "Without resale price maintenance it is contended large stores enjoying these advantages would expand" -- and so on. That is what you have in mind, I suppose?

MR. PALMER: That is one of the points.



But, taking the first part of the booklet given out by the Restrictive Trade Practices Commission, the first section, referring to the MacQuarrie report, they say:

In recommending the prohibition of resale price maintenance the MacQuarrie committee referred in the following terms to "loss leader" selling:

"As to the 'loss leader' device, the committee believes that it is a monopolistic practice which does not promote general welfare and therefore considers that it is not compatible with the public interest. However, we do not believe that it represents any immediate danger: extreme forms of price cutting are not very likely in this period of inflation and relative scarcity. Moreover, we are convinced that there can be found other effective and more desirable methods of controlling the 'loss leader' than minimum resale price maintenance. Present circumstances afford time to make a careful study of such methods and the committee, therefore, does not think it imperative to make an immediate and hasty recommendation regarding that practice."

Then it goes on to say that the big stores would



become larger and would expand.

MR. GERIN-LAJOIE: Is that not in the first paragraph on page 3?

MR. PALMER: Yes. It says:

Without resale price maintenance, it is contended large stores enjoying these advantages would expand, whilst the small retailer must be gradually forced out of business.

And that is true.

MR. GERIN-LAJOIE: But that is not the view of the MacQuarrie committee. It was contended before the committee, apparently.

MR. PALMER: Yes.

MR. GERIN-LAJOIE: The committee does not say it is its own view.

MR. PALMER: Yet, it is being done. If you go into any province in Canada you will see small stores with padlocks on their doors and signs reading "For sale" -- due to the large monopolies.

MR. GERIN-LAJOIE: That is your view, anyway.

MR. PALMER: That is right.

MR. GERIN-LAJOIE: That is quite all right. Then, regarding ice cream, at page 2 of your brief, you mention that the large chain stores receive a bonus on their sales at the end of each month. Is it a bonus on account of the large number of sales?

MR. PALMER: Yes, that is right.



MR. GERIN-LAJOIE: Do you think there is anything wrong with such a practice?

MR. PALMER: Well, I don't think there is anything good in such a practice. The fact remains, as I have said -- and you have questioned me on these monopolies -- it brings in the point that they are able to buy these large refrigerating units.

Then, the ice cream manufacturer -- well, naturally he wants to dispose of that in order to be able to pay the farmer for his surplus milk. It all comes back to the beginning -- and it is a long story, I can tell you. We could drag it out for hours, -- which we are not going to do, because some of you are getting hungry.

But the fact remains that these monopolies do sell these various kinds of ice cream. They manufacture a brick of ice cream called a select brand. That brick of ice cream called select brand is not the same quality as the other brick of ice cream that we sell for 30 cents.

MR. GERIN-LAJOIE: Are you sure about that, Mr. Palmer?

MR. PALMER: I am positive about it, because it has not got the same weight -- although it has the same butterfat content. I have had them both analyzed and they are both the same in texture, so far as butterfat is concerned, and so on. But the weight is not the same.

MR. GERIN-LAJOIE: Are they not the same





size?

MR. PALMER: The same size, but the weight is not in them. Therefore they are not of the same quality.

That is why we asked in a letter to the provincial cabinet to have this ice cream graded, at one time. But we were defeated on that point, that the ice cream, as a whole, contained the same amount of butterfat. However, the ice cream they sell at 25 cents, which is called "select", and is offered for sale in the B & K Stores -- you could not buy it. That is not made for me. It is made for the B & K Stores. I am just showing you the squeeze play that is put on us.

THE CHAIRMAN: Do you mean that that particular grade of ice cream, which you say is called "select", is sold only by B & K Stores, and is sold at a lower price than the -- I think you meant -- better grade, which is sold by you?

MR. PALMER: It is sold to the B & K Stores at the same price, according to their invoice, \$2.88 per dozen. But that is the one they sell at 24 cents or 25 cents a brick. That is the one they are really selling, and making the equivalent in a rebate on their return at the end of the month. That fills their volume up.

THE CHAIRMAN: But it works out to the same thing in the end. At the end of the month they are getting it at a lower price than you get



the bricks you buy.

MR. PALMER: They get it at the same price, according to the invoices.

THE CHAIRMAN: But, at the end of the month, the net result is that they pay less.

MR. PALMER: Yes, they pay less.

THE CHAIRMAN: Has that any relation to the quality of the ice cream?

MR. PALMER: It does not weigh as much. But it has the same content of butterfat.

THE CHAIRMAN: There are different things besides butterfat in ice cream. Is it your contention that this select brand is somewhat inferior to the ice cream you buy?

MR. PALMER: I would say so, yes.

THE CHAIRMAN: Then, would you not think there might be some justification for having a lower price?

MR. PALMER: Well, taking it at that, yes. But when you are selling edibles to the housewife, she wants the very best for the very least. And when you are selling something at a lower price than the small individual merchant, you are dubious about the quality of it.

MR. GERIN-IAJOIE: I wonder if you would think there is also another reason for giving a bonus, as you call it, at the end of the month -- and that would be a lower cost of distribution, having the stores buying in large quantities. Of course the cost of distribution by the wholesaler



or the manufacturer is lower, I would imagine?

MR. PALMER: I would imagine so, yes. But these massive structures entice the public in there; and naturally, they buy. If we had these massive structures we could entice them in, too, just the same as Steinberg did in 1925. He gave a pound of butter away with every \$5 order. That built the Steinberg business up.

MR. GERIN-IAJOIE: We are not dealing with the practice of real loss leadering. We are just dealing, apparently, -- if I understand correctly -- with lower prices. That is all. And the question I am putting to you is whether these lower prices are not justified by lower costs of distribution.

MR. PALMER: Could be. I could go into that point.

MR. GERIN-IAJOIE: Do you not think that would be to the advantage of the consumer? Once again, if there is a lower cost of distribution, then there is a correspondingly lower cost of retailing.

MR. PALMER: Well, it could help the consumer to get merchandise cheaper, yes, by a larger amount being put in one centre.

MR. GERIN-IAJOIE: I wonder if you are aware that in certain parts of Canada independent retailers have joined together in a co-operative fashion to buy wholesale, and to get lower prices, such as the chains get from the manufacturers. I



am wondering whether you think that might be a remedy for the situation exposed and complained about in your brief.

MR. PALMER: Yes, if -- you see, the present situation dealing with wholesalers in this particular city of ours is that they own their own outlets. Well, they sell to the independent merchants whether they are a group or whether they are independents, but the greater is their volume they are turning out.

I have this to quote, that our percentage of markup from some of these dealers, whether group or individual -- we are paying approximately 3 per cent -- 3 to 7 per cent profit to them on that merchandise. Now, if they put that same merchandise they are selling to us into their main outlets, it would be more to them. Even if they put it in at  $1\frac{1}{2}$  per cent over their cost, and sell it to the consumer at a cut price, naturally they are not interested in supplying us, as independents, at  $1\frac{1}{2}$  per cent.

MR. GERIN-IAJOIE: If you were to join together as independents and were to buy together ---

MR. PALMER: In one quantity?

MR. GERIN-IAJOIE: Yes, and not from these suppliers, but from other suppliers in, shall we say, continental Canada ---

MR. PALMER: Well, that is a good point. But, without capital or a man of ability to take a large warehouse in a proper manner and adjust the





dues in this organization of ours, which is in its infancy, we would not have the pleasure of buying in those quantities, as you have described. What is the answer? To be able to defeat the monopoly or the chain store, that is the answer -- by the independent merchant merging in one group and buying in one block. And maybe they would have to make the same charge against us -- which is a day I would like to see.

THE CHAIRMAN: Do you mean you want to be charged in court?

MR. PALMER: If it were on the same terms as they are, yes, it would be a pleasure.

MR. GERIN-IAJOIE: What do you have in mind when, at page 3 of your brief you mention that the chain stores are "supposed to keep to a maintained price level" on Miracle Whip?

MR. PALMER: Well, in all commodities -- and we have many of them in our business, we have many classes of articles in connection with which we keep to a gentleman's agreement; and Miracle Whip was one of them. We all did sell it at the same price.

MR. GERIN-IAJOIE: What do you mean by a "gentleman's agreement"; was there any ---

MR. PALMER: There are some gentlemen in the business.

MR. GERIN-IAJOIE: But are there any agreements?



MR. PALMER: In a verbal category, yes, but not written. There are no written agreements, but there are still some gentlemen left.

3) MR. GERIN-LAJOLIE: You have had reference to the 5 per cent minimum profit; since the new legislation of a few years ago, is it not true that no one is supposed to keep to a maintained price level?

MR. PALMER: Yes, nobody is supposed to, that is right.

THE CHAIRMAN: So that when you say they are supposed to keep to a maintained price level, that is just a figure of speech.

MR. PALMER: Yes, a figure of speech, as a gentleman, yes.

MR. GERIN-LAJOLIE: You had reference to the British Columbia provincial statute imposing a minimum 5 per cent profit on any commodities -- food commodities?

MR. PALMER: Yes.

MR. GERIN-LAJOLIE: Did I understand you to complain that -- or to say -- that this minimum profit was not followed by every retailer?

MR. PALMER: That is right.

MR. GERIN-LAJOLIE: I wonder if you do not think that there would be ways of enforcing such a provincial statute, enforcing it provincially, and that that is a quite independent matter from this inquiry that is going on now?

MR. PALMER: Yes, it could be done. But



you see, the little independent merchant has not the time. His business calls for him to be there, unless he is stricken ill. To follow all these loss leaders on the provincial cabinet minimum loss, as in chapter 219 -- if you were to do that, his time would be all taken up in court. Because every day one or two of them crop up, you see.

It would be folly for us to do that with the provincial cabinet, because the present provincial cabinet in this province today has its hands tied with so many difficulties in coming into power.

MR. GERIN-IAJOIE: I understand this statute has been in force for several years.

MR. PALMER: Yes, but it has been amended time and again. I see three amendments to it -- 1937, 1939 and 1940. But the fact remains that we are dealing with a different body. We have tried to work on a different percentage on milk, with the provincial government, and have had no help from them. If we were to take up these loss commodities we would be getting the same thing, again -- the gate. I am only giving my innocent point of view on it.

MR. GERIN-IAJOIE: Now, I have had the opportunity to look at the additional sheet of information you handed the Commission this morning. You mentioned some articles -- watermelon, peaches, rhubarb -- selling in the Safeway Stores at a price to the consumer which is about the same as the



cost price of the independent merchant. Is it not possible that in a number of these cases -- watermelon, peaches and rhubarb -- that they are perishable items, and that there would be justification for, if I may say so, giving them away or selling them at cost price?

MR. PALMER: That is true. You have hit the hammer right on the head, with the nail. You have killed the whole discussion right there, in a nutshell. That is the excuse; that is the alibi.

MR. GERIN-LAJOLIE: My question is this: Is there not justification for it?

MR. PALMER: Yes, there is. You have covered the whole thing very nicely. There is justification. If I have spoilage, there is justification to give it away at cost.

MR. GERIN-LAJOLIE: Or if they have perishable items?

MR. PALMER: Yes, absolutely. It happens all the time.

MR. GERIN-LAJOLIE: And I suppose the independent merchants would do just the same thing in many cases.

MR. PALMER: Yes, they would. But when you come to buying a commodity, when people are giving it away regardless of whether it is spoilable or not, it hurts.

THE CHAIRMAN: You do not happen to know whether in this case the watermelon and rhubarb were spoiling?





09) MR. PALMER: No, we do not. We only take the ads. We buy the same day as the ad comes out, and we say, "Oh my, Safeway is selling watermelon at five and we are paying five; oh glory be"; and we are up in arms and our telephones are ringing and we are trying to raise hell, but we can't because we do not have the backing.

THE CHAIRMAN: Your answer to Mr. Gerin-Lajoie meant this, that if perishable goods were in a condition where they had to be sold quickly or they would deteriorate to the point where they could not be sold, then you would be justified in acting. But in this case you do not know whether that situation existed or not.

MR. PALMER: No, we do not know. Nobody could answer that question honorably.

MR. GERIN-LAJOIE: That is all I wish to ask.

THE CHAIRMAN: Mr. Palmer, I am not certain if you have told us as clearly as you can just what you mean by a loss leader. In your brief, in two or three places, you refer to things as being loss leaders. I am not sure whether you mean that the price at which they are being sold, that is, the goods referred to in those instances, are below the price at which the independent retailer can compete, profitably, or whether they are actual loss leaders in the chain stores selling them. Are they selling them at a loss? Which is it?



MR. PALMER: If you take item No. 4, eggs, those cartons cost us approximately  $2\frac{1}{2}$  cents each to put them in cartons. If you take  $2\frac{1}{2}$  cents on top of 49 cents a dozen for eggs, you have definitely a loss leader.

THE CHAIRMAN: What I am getting at is this, do you know for instance what the chain stores paid for eggs at that time?

MR. PALMER: No, you cannot get that information.

THE CHAIRMAN: Well, you are not able to tell whether the chain stores in that instance, with regard to eggs, were actually selling at a loss, themselves?

MR. PALMER: No, nobody could tell you that.

THE CHAIRMAN: But your contention is that the price at which they were selling would mean that you could not sell in competition, without selling at a loss?

MR. PALMER: That is right.

THE CHAIRMAN: It forced you to sell at a loss, if you were going to compete?

MR. PALMER: Yes.

THE CHAIRMAN: But you are not able to say whether the chain stores were actually making some profit at that price?

MR. PALMER: No, I did not go and ask them for invoices to confirm my brief.

THE CHAIRMAN: Then, it may well amount to this, in some of these instances to which you refer,



that the lower price at which chain stores were able to buy enables them to sell at a lower price than you could sell, and still perhaps make a profit. If that is so, then the Minimum Loss Act, which you have, would not be any protection to the independent dealer, would it?

MR. PALMER: No, it would not.

THE CHAIRMAN: In cases of that kind.

MR. PALMER: That is right, it would not.

THE CHAIRMAN: Because if they had their 5 per cent profit the Act would not be applied against them.

MR. PALMER: That is right.

THE CHAIRMAN: Even though it hurt you just as much as if they were selling at a loss?

MR. PALMER: Yes. But on that date it was submitted to the Restrictive Trade Practices Commission -- a leaflet was submitted showing the market price of eggs on that date. The poultry inspector puts that in the paper in the morning and we are guided by that. And that is what the dairies or the suppliers of eggs charge us for our eggs. They get that from the paper every day. And we would assume that the chain stores would be guided by the same policy in force and that they would be guided by that price.

But, according to the information we have -- and don't quote me on this -- they get eggs from other sources than that paper quotes. And they bring a carload in, on their own hook. Well



then, that does not come under ---

THE CHAIRMAN: There is nothing illegal about that, is there?

MR. PALMER: No, nothing illegal, according to my knowledge. But that is how they defeat the independent merchants, and there is no law against it. And until the independent merchants become in one body, as our learned scholar stated, one group, we are harnessed.

THE CHAIRMAN: Thank you, Mr. Palmer. Do any of the others wish to say anything as a result of what has been said by Mr. Palmer?

MR. WHITNEY: I believe that Mr. Palmer has covered it pretty well. But I would like to say we are not operating under a free enterprise system, as I understand it. Perhaps at one time we did have free enterprise. But the man with a lot of capital behind him definitely has the advantage. It is very difficult for the small man, with little capital, to operate, sir. We are operating at a disadvantage.

We buy at a disadvantage. There is no doubt about it that Safeway and B & K can show a profit on every item which is sold, even if it is sold below our wholesale price. That is what we are up against. I maintain the government will have to take action and even allow the manufacturer to set a price on some commodities, especially commodities like cigarettes and tobacco. Because that is a big source of revenue to the government,





and perhaps there are more merchants in the tobacco field than any other field, and making a living out of it.

If you are going to force the little man to the wall, then you are going to throw a lot of people out of business. It employs more people in business than any other business in the country. So I would like to see the price of cigarettes back on the package, and give us a fair price on them.

THE CHAIRMAN: Do you apply right across the board in groceries, or only on cigarettes?

MR. WHITNEY: I would not like to put it on all across the board. I maintain, especially in tobaccos and cigarettes, because I can go down to the liquor store here in Victoria and it would cost me just the same as it would in Esquimalt. Liquor is a big profit to the provincial government, and I believe cigarettes is a big profit for the federal government.

THE CHAIRMAN: Liquor is handled by the government, is it not? That may be the difference.

MR. WHITNEY: Perhaps we will have to do the same thing with cigarettes, then.

THE CHAIRMAN: You would not call the liquor business private enterprise, in those circumstances, would you?

MR. WHITNEY: No, it is not private enterprise. I believe the government gets a lot



more out of it than anybody else -- and the same applies to cigarettes.

THE CHAIRMAN: I understand that in British Columbia it is a government monopoly, is it not -- the liquor business?

MR. PALMER: I believe that tobacco and cigarettes must be a federal monopoly, then, because of the taxes they derive from it. It must be.

THE CHAIRMAN: I am afraid it has not anything to do with the amount of taxing they get out of it. The question is whether it is a government monopoly or private enterprise, and that depends upon whether the government handles it and sells it or whether individual businesses are buying it and selling it and trying to make a profit out of it. I think there is a difference between liquor and these other things you have mentioned.

MR. WHITNEY: Certainly there is a difference; but I am just referring to the amount of revenue involved.

THE CHAIRMAN: You are concerned primarily with cigarettes and tobacco?

MR. WHITNEY: Yes.

THE CHAIRMAN: Because, if you applied it right across the board, and the big chains and other composite stores were able to purchase all their supplies more cheaply than independent stores, and if you fixed the prices right across the board, you would force these people to make a lot more money --



and I do not suppose that is your object.

MR. WHITNEY: Perhaps taxation would take care of that. I do not think price fixing all across the board would be advisable. But I would like to see it on cigarettes. That is my point.

THE CHAIRMAN: Is there anyone else to be heard this morning?

MR. DAVIDSON: The Canadian Association of Radio and Appliance Dealers.

THE CHAIRMAN: Then, that completes the presentation with regard to this association. We have another brief to be presented here. If they are ready, we will commence the hearing now. Perhaps however we should have five minutes recess, because the reporter may be suffering from writer's cramp.

--- Recess.



--- Upon resuming.

REPRESENTATIONS:

Canadian Association of Radio and Appliance Dealers:

Mr. M. A. Kent  
Mr. George Duck  
Mr. Robert Pierce

THE CHAIRMAN: The hearing will resume. The second brief to be presented this morning is that of the Victoria branch of the Canadian Association of Radio and Appliance Dealers. I would ask Mr. Kent to come forward. Is there anyone with you, Mr. Kent?

MR. KENT: I tried to have two or three of them come with me, but they seemed to be afraid. However, the president of our association is here, but he could not appear because he did not feel he was properly dressed.

THE CHAIRMAN: Then, Mr. Kent, would you let us have your full name and your position with the association.

MR. KENT: I am M. A. Kent; and at the time this brief was prepared I was president of the association.

THE CHAIRMAN: You are not president now?

MR. KENT: No.

THE CHAIRMAN: Past president?

MR. KENT: Yes. And there is also Mr. George Duck of the Canadian General Electric Company, and Mr. Robert Pierce.

MR. FAVREAU: What is Mr. Duck's function





with the association?

MR. DUCK: I have no function with the organization.

MR. KENT: They are manufacturers here.

THE CHAIRMAN: Is Mr. Pierce an official of the association?

MR. PIERCE: Yes, a member.

THE CHAIRMAN: Mr. Kent, you were here when the previous brief was read, so that you will know the procedure which we have suggested.

MR. KENT: Yes. I shall read the brief through entirely and then I shall make my comment. That is the way I had intended to do it. This is a brief on loss leader practices presented to the Restrictive Trade Practices Commission by the Victoria branch of the Canadian Association of Radio and Appliance Dealers. It is as follows:

As spokesman for the Victoria Branch of C.A.R.A.D. I wish to thank the Commission for the opportunity to present this brief on their behalf.

In discussing the question of "loss leaders" we feel it is necessary to arrive at some common ground with the Commission as to just what constitutes a "loss leader".

The government conception appears to be that a loss leader is some article sold for less than cost, whereas from a dealer point of view a loss leader is an article



which is sold at a price where the gross profit is below the cost of doing business. There is a vast difference between these two interpretations and until we can arrive at a common definition we will get nowhere.

THE CHAIRMAN: Without desiring to interrupt, so far as the Commission is concerned, we have not had any definition or construction of loss leader for the purpose of this inquiry. What we are trying to do is find what it is that people think a loss leader would be, and what they are talking about when they appear before us, so that we will know the nature of their complaint.

MR. KENT: I understand. I do not think you will get common ground. You may say that it is a certain percentage above cost. However, the brief continues:

Bearing out this contention we wish to quote from an editorial in the Victoria Daily Colonist on May 17, 1953 which shows how far apart the thinking is between the provincial government and the businessman, and I quote:

"Back in 1937, when loss leader goods were being offered to the public the provincial legislature passed the Commodities Minimum Loss Act, which is still in force although there has been no attempt to invoke it in



recent years. This statute prohibits retailers from selling certain loosely specified goods at prices less than 5 per cent above their cost to the retailer. The ban covers grocery products and meat. While some legal doubt is held about its applicability to such things as cigarettes, the schedule of definitions in the Act seems to cover them."

As you will see, in the editor's opinion 5 per cent above cost is a reasonable profit, whereas no retail merchant can exist doing business on this margin. The editor's own paper sells for 7 cents on street sales at a cost to the dealer of 4 cents, or a profit of 43 per cent -- markup of 75 per cent.

It should not be too difficult to establish what the average cost of doing business is in every line of trade, and this markup or discount should be taken into consideration by the Commission in appraising when a firm is using an article as a loss leader.

In our line of business we suggest that the cost of doing business is not lower than 25 per cent -- 33 1/3 on cost -- and even if the Commission settled on this percentage it would help to clarify our thinking.



It is common sense to admit that when an article is sold below the cost of doing business by any firm, some other article must be sold at a correspondingly higher per cent of profit to make up for the "loss" on the cut article. In other words if the "cut" article bore its proper markup the "regular" article could be reduced in proportion. Therefore the purchaser of the "regular" article pays too much and subsidizes the purchaser of the "cut" article.

In our opinion the abolition of price maintenance by the government has thrown all lines of business into a most chaotic condition with drastic results to the retail trade and very dubious benefits to the consumer, who cannot help but be confused by the various prices on the same article. The reputable merchant has been forced to curtail his services to an extent which does not make for good public relations, and if he can't keep going has had to close. The gyp and racketeer, who cares nothing for service, is in control.

We would like to quote an item from Canadian Business of April 1954 under the heading "Finished Goods Prices are Softer" and we quote:





"Quoted prices for finished goods, even major equipment, disguise the actual softening which is taking place. Cut prices, concessions, free extras, loss leaders, are becoming a serious problem. Elimination of price maintenance is proving a boomerang forcing smaller retailers to reduce profit margins to dangerous levels, especially on durable goods. The situation is more serious than is generally recognized, many smaller outlets are not building up sufficient financial reserves to weather a slight setback."

As a matter of fact the abolition of price maintenance is, in our opinion, the worst kind of class legislation that has been enacted for a good many years. It makes it an offence, punishable by fine and we believe imprisonment, for businessmen to meet and discuss their various problems if the matter of price is mentioned, and what meeting can take place without this being discussed.

On the other hand we see the government controlling upward, without any evident qualms, the price of the meat-bread-butter-cheese-potatoes-milk-wheat and almost every article of food which we all have to purchase daily.



We have the farmers associations who are encouraged to meet, discuss and recommend prices of their produce. We have labour leaders setting the price at which they will sell their services to the public, and doing so with government aid and blessing.

Why then does the government go out of its way to "kill the goose that lays the golden egg" and do its best to persecute the businessman who provides more employment, bigger pay rolls and more revenue to the government than any other source.

We, as reputable businessmen, are tired of being treated as if we were profiteers, a public menace and undesirables in our economy. The small businessman is the backbone of any community. Take a look at any list of Chamber of Commerce members, service clubs, councils or welfare associations and you will find it is the businessman who is mostly represented. He has a stake in his community and is usually a solid citizen. Why not treat **him** as such?

The government could not, we are sure, have enacted this legislation on the grounds that profit in the retail trade was too high. Their own records



should show that net profits are at best 5 cents out of every dollar of sales, and on an average, not counting firms in the red, would average below 5 per cent.

The government holds a very preferred position in every business, in that it participates equally in profits but takes no risks. It demands its share in cash too. Why then does it enact legislation which amounts to a persecution of its best customer?

Let the government stop giving the public the impression that our higher prices, as compared to the U. S., are due to excessive profits by the retailer and manufacturer. If the government wants our prices more in line with those of the U. S. they have the remedy by eliminating the 10 per cent and 15 per cent tax at the manufacturer's end, which tax doubles by the time it is passed to the consumer. We are not claiming the government should do this, but only that the blame for our high prices be placed where it belongs.

In view of the above we strongly urge that the government rescind the Price Maintenance Act and permit the manufacturer to set and control the retail price as formerly.



The above brief was endorsed unanimously at the annual meeting of C.A.R.A.D. (Victoria) on Tuesday, April 27th. Sixty dealers and associates were present.

You will realize that while your instructions from the government are under the heading of loss leaders, I rather feel that there is no way of interpreting, logically, what is a loss leader; and so this, from my point of view, comes right to the Price Maintenance Act. I think the two are tied together. And, from the instructions I have had, I think you will realize that while, nominally, you are dealing with loss leaders, the price maintenance picture comes into it very definitely.

I do not think it should be necessary, to provide much proof at this end as to the prevalence, since price maintenance was abolished, of drastic slashing of prices in all lines of retail trade. I feel that this must have been covered very thoroughly by others sufficiently to convince you by now of our claim that conditions in retail trade are chaotic and in need of remedial action of some sort.

However, I have prepared a number of newspaper advertisements -- I just got them this morning. They are newspaper ads taken from our files in the store which give the prices. Nothing is sold below cost, mind you; but the markup,





according to our cost prices, ranges anywhere from 17 to 26. I would say that 26 looks good to me right now. But they run from 17 or 18 per cent. Our own firm is represented here, too -- 17 per cent, 23 per cent, 15 per cent -- these are only a very few of them. And this has been going on ever since the Price Maintenance Act was enacted.

You could multiply this by twenty or thirty times, because practically every day there is an instance of things being sold below list and, in our opinion, below what it costs for anybody to do business. And I think most of the merchants here will bear me out in that.

We have all urged, at least most of us have, that it is a matter of self-protection. We do it, because we do not like to be beaten all the time. When they get together they say, "It is too bad that we have to keep on cutting prices." But I am rather at a loss -- and I may be getting off the track a bit -- to understand what may have been the reason for introducing the **Resale** Price Maintenance Act in the first place.

I can only surmise that it might have been either from the conviction that profits in industry were too high, or that it was a means of bringing the cost of living down.

In my own brief there, I have mentioned more or less as a guess that the profits in industry were 5 per cent. I happened to hit the nail right on the head, because it has been published since



then in the Financial Post of May 21, 1954. I will not read it because it would take too long. But it sets the amount there of a thousand firms at 5.2 per cent. That is 5.2 cents out of a dollar. This is the manufacturers. And that is lower than it was the year before. Also that is after income tax, but before any dividends or profits are paid.

That is the manufacturers' end. And I have always understood they considered that a reasonable profit -- 5 cents out of a dollar. And they do not always get it. I am also assuming that those figures are taken from firms which are in the black. I do not think they would take firms which are bankrupt or which show a deficit. I think I am right in assuming that they take profitable firms to arrive at that 5 per cent. I believe that if they included firms that went into the red the over-all profit would probably be less.

From the government's own figures, that is, those published by the Dominion Bureau of Statistics, and I happen to know that in the Vancouver brief they are quoting the same figures to you, this lists the hardware stores, the furniture stores, the home appliance and radio stores, men's clothing, besides a lot of others which I have not bothered to look over.

The percentages shown there in unincorporated companies shows a net profit, before income



tax and before proprietors' salaries are taken into consideration. I have adjusted these figures by giving the proprietor which, in most cases, would mean the man who works there -- and he works pretty hard, I think -- and I have taken a very nominal figure as probably the salary he would pay his key man.

We find there, in hardware stores, unincorporated, by making that adjustment, that their profit is 1.4 per cent before income tax. In the incorporated companies it is 2.79 per cent before income tax. In the furniture stores it is 3.28 per cent before income tax, and in the home appliance and radio stores it is 2 per cent before income tax. In the men's clothing stores it is 3 per cent.

So, if the government enacted this legislation from the point of view of thinking that wholesalers and businessmen and retailers were making too much profit, I do not know where they could have got their figures from because they have those figures in our reports and in our income tax returns. They, above all people, should know that the average retailer -- and I do not think there is any question about this -- if he can make 3 or 4 per cent net on his operation, figures he is doing fairly well.

I made it a point in the last two or three years to examine balance sheets which were published, where they have divulged sales volume, and I can



say truthfully, with one exception -- in our own field -- that I have not seen any profits above 5 per cent. There was one case, a well known television company, a manufacturing company, where the profit was 9 per cent, perhaps it was more than that. But that was the first year they had been in business and they probably had no write-off and they probably showed a good profit. Perhaps this year their profits will be pretty slim.

So we can eliminate any thought that the government, if they took that into consideration, enacted this legislation to make us share our profits with the public. As a matter of fact, from my point of view if that was their idea of doing it, it shows that they do not look over the balance sheets of the companies which they have in their possession.

The only other point I can think of that might have caused them to enact this legislation, was to bring the cost of living down. Those are the only two I can think of, other than catching votes, and I don't think a Liberal government would be a party to anything like that.

If it was a matter of bringing the cost of living down, they have a method which to my mind is far more equitable and more just, and that would be to reduce the sales tax and the excise tax. They tack on 10 or 15 per cent at the manufacturer's end. And, as retailers, we are always being accused of keeping the price up and having our prices compared





with those in the United States.

There is no question about it that, in our appliances, if you take a refrigerator selling at \$400, which pays a tax of 10 or 15 per cent at the manufacturer's end, if those taxes were off we would be able to sell that refrigerator for about \$300. That tax doubles or more by the time it gets to the retailer.

So, if they really wanted to bring the cost of living down one way would be to reduce those taxes. This would be reflected right down the line.

Another way, and a simpler way, would be to get out of the food business, that is, that the government should get out. Because at the present time they are controlling the cost of our food, right down the line. I may be getting a bit off the line, but I think these things are pertinent to any consideration we give to legislation of this kind.

THE CHAIRMAN: The cost of goods -- we are not in a position to make a recommendation about taxes.

MR. KENT: I am just taking this matter up as a matter of principle, rather than as a matter of personal evidence of injustice. The principle of the matter is that we have on one side of the fence the government and some other organizations which are hollering about free enterprise, while at the same time they, themselves, are hiding under



regulations which they do not allow us to use, ourselves.

And the government are in the food business, there is no question about it. They are taking my money to keep food up. I am not saying that there are not reasons. There may be good economic reasons that they know more about than I do -- and I certainly hope they do. Because they are keeping the prices of food up, as you can see by quotations I have here.

I would refer to the Financial Post of June 6 of this year which carries the heading Nothing to Boast About, and states:

Right up until the end of the last war Canadian farmers sold the greater part of their surplus agricultural production to Great Britain. We had a huge and profitable market there for meat, dairy and poultry products. It was our major export outlet, virtually our only one for cheese, canned milk, bacon and eggs. In the last ten years this market has dwindled to almost nothing.

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Why? In a remarkably fine speech in Montreal last week agriculture minister Gardiner answered that question: We have out-priced ourselves.

Mr. Gardiner didn't put it in those words exactly, of course, but that was the real meaning of his remark. Rather than warning Canadian farmers of the danger of this situation,



however, he actually seemed to boast about it.

Why should we wish to sell these products in Britain when we can get far more for them in Canada, the Minister of Agriculture asked? "Britain is buying her beef in London for 16 cents a pound; we are selling ours in Montreal for 39 cents. Britain is buying her bacon for 31 cents; we are selling ours for 45 cents in Montreal." And in butter, cheese and eggs, he added, it was the same story.

We have lost that market because our prices have got far out of line, as Mr. Gardiner points out, and one of the main reasons they have got out of line he also explains. Last year, he stated, the federal government spent more than \$100 million on Canadian agriculture. A substantial part of that sum went for subsidies either in straight payments of so much a pound or to cover losses where the government stepped in and bought butter, cheese, pork and beef to keep domestic prices high.

And this appeared in the Colonist of May 21, 1954:

In a frantic effort to clear out last year's surplus butter stocks before this year's production pours into the government warehouses, the Dominion Prices Support Board has slashed the price to the trade of



30 million pounds which it has had in store for months. At a price of  $55\frac{1}{2}$  cents a pound the wholesalers are now being offered butter which the government bought in at 58 cents. The taxpayers will have to stand the loss, and that will amount to \$750,000 if the government succeeds in getting rid of the surplus before it spoils, which is problematical.

Agriculture minister Gardiner has informed the Commons that the Prices Support Board will continue this year to protect the grocers' price at the 58 cents level, and will go on buying as much Canadian-produced butter as is surplus to consumers' demand, on exactly the same basis as it bought in last year's surplus.

I am just quoting extracts. I continue:

The only market for Canadian butter is at home, and that market is oversupplied -- not because there are not enough potential consumers but because the price, thanks to Mr. Gardiner's "protection" is higher than people are willing to pay.

And I find this in the issue of June 6 of the Financial Post, headed, Ottawa Support Cancels Price Drop on Cheese, and stating:

Householders' hopes of substantially lower retail prices on cheese have been squelched by the federal government purchase





at 30 cents a pound of 5.5 million pounds of carry-over cheese from last year. Ottawa backed this up with the promise to purchase from the Ontario cheese producers marketing association all of this year's unsold cheese at October 31 at 30 cents a pound.

This purchase amounted to \$1,650,000 worth of cheese, that they have just bought. The article continues:

Another effect is that Canadian consumers will have to keep paying close to current retail prices when a drop of up to 6 cents a pound appeared imminent.

Then, referring to pork the Colonist of June 15, 1954 contains the following article bearing the heading Government Pork Pie, and stating:

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Two years ago the Canadian government bought up 9 million pounds of pork at 55 cents a pound. The government had the pork canned (which must have cost something) kept it on its hands for two years, then sold it to a private firm for 16.65 cents a pound.

Now, according to information given to Parliament on Wednesday, the private firm has sold this pork to Russia through a Soviet foreign trade association at a small profit. The net result is that the Russian consumer gets Canadian pork at a fraction of the price it costs the Canadian taxpayer.

Now there was no reason whatever



against the Canadian private firm selling pork to Russia, seeing that pork is not strategic material, and there is nothing wrong in trading with Russia in things not strategic.

But what a lovely ending to a government venture in business -- cheap pork for the Russian consumer in effect subsidized by the Canadian taxpayer!

Then, the next has nothing to do with pork, but it does show a trend -- that is, if the government is sincere in not letting anybody get the monopoly. It should take note of this. This is a column headed The Nation's Business, appearing in the Financial Post of May 29, 1954. This column is headed The Plan to Grab Our Meat Industry, and it states:

There's a movement going on in rural Manitoba just now that should profoundly affect millions of Canadians.

Its aim is to create a complete monopoly in meats. That would put the whole meat business into politics and is almost certain to create marketing messes similar to the one we have in wheat today.

The rampaging farmers' union is campaigning up and down Manitoba to put all livestock marketing under control of a single board. The much older Federation of Agriculture which has had some



enlightening experience with such things, is strongly opposed.

If the farmers' union wins in Manitoba, then its campaign will move on into the other provinces and all Canada will be included in the plan.

Eventually if the farmers' union has its way, all livestock in Canada, from the stable to the table, would go through the board. Prices would be fixed all the way down the line, to the farmer, to the commission agent, to the packer and finally to the consumer, both domestic and export. Moreover, there would be no more choice for any individual, either buyer or seller.

I make a note here to ask why there is no prosecution under the Price Maintenance Act.

These extracts have all had to do with products which they are paying for and which profoundly affect the cost of living -- if that was the government's idea in putting this law into force.

There are only two reasons I can think of and I do not think they are very valid ones. But if they will look at the record, if there is any monopoly today it is in the government and what they control -- and, in a sense, in labour.

I have mentioned labour once or twice, that they have a right to control their prices; but it seems to me that the minute you criticize labour there is a volley of invective comes along your way



when you dare to say that labour is affecting prices.

I had a long letter from a prominent member of the dominion parliament, and he said there was no comparison about the statement in my brief saying that labour was operating under what amounts to a price fixing arrangement. He said that they have to compete for their labour rights whereas, as he put it, and I think I can state it pretty accurately, "The manufacturer makes an article and then he sits in his wonderful office with his feet on the top of his desk, sets the price, and that is all there is to it."

Well, that was his contention as to what a manufacturer gets by with. I wrote him a long letter on it, but I am not going to go into that here. However, as a retailer I have always known, as well as anybody else, that unless we have good wages we cannot sell at these major prices that we have today. And most certainly I am not against labour. I just want to be fair; and if we are going to be regulated, then I think they should be, too.

In the issue of the Reader's Digest of June, 1954 there is an article bearing the heading **The Rights and Wrongs of Labour**. I should like to quote this part:

Outstanding labour leaders flatly assert on platforms, in writings and in arguments in the courts that there should





be "no competition between workers". They argue that all workers should be organized in unions which should work in concert to establish an irresistible power to dictate the terms and conditions under which all wage earners will be permitted to earn a living. They demand a monopoly power in industry which they rightly denounce whenever such a power is sought by managers.

This is of course an American publication; but it applies with equal force to Canada.

It is also interesting, when we are dealing with labour, to look back through the reports -- and I am referring to the interim reports -- of the committee to study combines legislation, in connection with retail price maintenance. It is interesting to see who in those days, 1951, were in favour of this legislation being enacted, and who were against it.

Paragraph 4 on page 7 contains this:

Although there are some notable exceptions, in general the associations representing manufacturers, wholesalers and retailers favoured resale price maintenance. On the contrary, co-operatives, labour unions, farmers' and consumers' associations expressed opposition to the practice.

That is, the people who do not wish to be



controlled in any way themselves -- and that applies to co-operatives, although they do not come under the same rules, perhaps as private industry in that they do not pay excess profits taxes -- but labour unions, most definitely, and farmers, who now are enjoying a great deal of protection, are the ones who wanted this legislation.

But, let us look at it a little further, from the point of view of the government -- still looking for a reason as to why they would penalize and ostracize the businessman. Let us take a look at their own figures. The figures I have before me purport to be those of budgetary revenues by sources, and I shall give the information for 1954. These figures are authentic, and they are from the government.

Let us see who is the best customer of the dominion government. We find that under personal income tax the revenue is 27 per cent. But from corporation income tax, including excess profits tax, the amount is 27 per cent. Under excise duties, sales and other excise taxes the amount is 25 per cent. The balance is customs imports duties and other revenues.

So that the total you get directly from business, in government, is 52 per cent of the total revenue. And when you take a look at the figure for personal income tax and the amount that is paid to people who are employed in industry -- without any question the people who are contributing



most of the work today -- you see how high the percentage is from business. Up to at least 60 per cent of the total comes from businessmen; and to say that it is not hurting business today -- well, I do not think there is any question about it. I have been in this business -- it is an old business, I believe the oldest business of its kind in British Columbia; probably it is too old. Probably we should get out of it, like my very good friend who has been in business eighty years. He is not as old as we are, but he is closing out now. He feels it is not worth the effort -- and in closing out he is putting twenty-seven employees out of work on August 1. Yet he has been in business eighty years.

THE CHAIRMAN: Not the same man, surely?

MR. KENT: His family has been in the same business for eighty years. It started out as a music business, and grew into electrical appliances. It is not a question of being bankrupt. They just feel it is not worth the effort and they are closing out -- and, as I say, there will be twenty-seven employees out of work on August 1.

I should like to read something into the record from the Radio-TV-And Appliance Trade Builder of May, 1954. The article is headed: Fair Trade Law Would Solve Problem for All, and states:

What is needed, and needed badly, is government recognition of the fact that



the prohibition of price maintenance is not having the effect desired by anyone, including the customers who buy the merchandise. The public does not want the confused picture they are compelled to study today before making the purchase of an electrical appliance, neither does it want the low price with no service currently being offered by so many. Instances were brought to light during the convention where customers of cut-rate stores were going to the more conservative dealer with appeals for help in the matter of service, because the dealer from whom they bought the device, usually a TV set, would not or could not render needed service. By this time such customers realized that their choice of a dealer had not been a wise one, even if they might have made a saving of a few dollars at the time of purchase. The reason for the cut-rate dealer's indifference in the matter is not hard to understand; he made no profit on the deal and consequently had no means with which to provide service.

If the policy of the cut-rate dealer affected only himself the situation would not be so tragic. Unfortunately, however, the whole price structure has been wrecked and so has public confidence. And the sad





part is that no manufacturer ever maintained prices at a level the public did not want to pay, having in mind the fact that the need for service is inevitable and that the dealer is the logical person to look to for that safeguard of the buyer's investment.

Taking all the angles into consideration it is difficult to understand why the legislation cannot be improved, perhaps by adopting some form of fair-trade law such as that in force in the United States. This offers a degree of protection to the dealer (who is the forgotten man under Canada's price laws) without removing the element of competition, for no one is compelled to buy fair-trade products if he does not wish to do so. There are plenty of other makes from which he may make a selection. Fair trade, as presently in operation in the United States, protects both the trade and the customer, and recognizes the fact that the dealer must live, too. True, it may not be perfect but compared with what we have in Canada it seems like a remedy that would be eagerly grasped by everyone, trade, public and manufacturer alike.

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When we first got your notice regarding loss leaders most dealers threw it in the basket,



because we knew there was no solution. One very prominent dealer, who was here this morning but who had to leave, had got our notice, which is headed, "Loss Leader" and because it was headed "Loss Leader" and he did not know it was tied up with price maintenance he threw it into the basket and did not bother about it.

Most of these things have been picked up within the last few months, because there have been many articles which I have read before and did not bother keeping.

Another interesting item is the statement by Mr. J. D. Campbell, the general manager of Consumers Products of the Canadian Westinghouse Company. I shall quote the figures he gave -- and I presume he got them from some satisfactory source -- where he points out that business failures increased by 117 per cent in 1953 over those of 1952 in the appliances business. In other words, they were four times greater than the average of all business. And that is a very recent statement of his.

One other point, before I come to the end of these remarks. I would like to have it on the record, and I would like my friends here to understand it, because I think this has great bearing in that it comes from a top man in a large concern in this business, one whom price maintenance does not affect a great deal.

I am referring to a speech by Mr. Burton --



that is, Mr. E. G. Burton -- in addressing the Canadian Life Insurance Officers Association in its meeting at the Seignior Club of May 28, 1954. Mr. Burton, as you are well aware, is the president of Simpsons-Sears, and he has no axe to grind. In part, he said this:

About two years ago the Canadian parliament passed legislation which had the effect of preventing a manufacturer from setting a resale price for his product. When this law was first enacted it had little or no effect because there was no surplus production of nationally advertised lines of merchandise, but now that there is a plentiful supply, this particular legislation is causing unnecessary chaos in a large section of responsible and dependable retailers.

While my company with the development of its own brands is not affected to any great extent, nevertheless, it is a most serious threat to thousands of legitimate small retailers who are really the backbone of the distribution system, as far as manufacturers of nationally advertised lines go. These manufacturers should know, if they do not already, that these dealers are in real danger of being forced out of business.

I call them legitimate dealers because



they are the kind who stand behind the merchandise they sell and service it when anything goes wrong. I repeat that many of them are in real danger of being forced out of business by this well-meant but unfortunate legislation in favour of a distributor who thinks mainly in terms of a quick profit today and cares little about you, the consumer, tomorrow. In fact he cannot afford to care about you.

It is a strange anomaly that in the United States there is legislation exactly the opposite to what we have in Canada. It is my opinion that there should not be legislation one way or the other in either country, but that each manufacturer, provided there is competition between manufacturers should be able in a free economy to say to whom he will sell and under what conditions.

Today there is plenty of competition between manufacturers of consumer goods, and it is ridiculous to think that any manufacturer could set a resale price at a figure that is not competitive.

And it is interesting to note, too, that 70 per cent of all retail business in Canada is done, not by the big stores, but by the independent stores. And I believe in the United States the percentage is 80 per cent.





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However, my plan for relief is based as much upon the question of fair play as it is upon the physical effect of this discriminatory legislation.

It is simply that the right of free association with friends and competitors be accorded to the businessmen in the same degree such association is permitted in other segments of our society. Let us have the privilege of conducting our affairs as we wish, just so long as there is no monopoly indicated.

The very fact that a manufacturer or distributor is restricted as to his actions in choosing his agencies, the fact that he cannot take those steps which in his judgment would result in an orderly marketing of his product, the fact that an agent once appointed cannot have his franchise cancelled freely is to my mind discriminatory legislation of the worst kind. Furthermore, the fact that when any two or more merchants get together and discuss prices on their merchandise, they lay themselves open to prosecution, is the worst **kind** of persecution by the government and in addition lays a stigma on the businessman which is most undeserved.

I must say that the most acceptable approach, to my mind, has come from Mr. Davie Fulton, M.P. for Kamloops who, in writing me, states:



It is small consolation to the retailers who are being forced to the wall to know their demise will be the subject of a post-mortem.

In closing, I realize quite well that while you are dealing with loss leaders, I would hope that the question of price maintenance might become part of your job; because I can see no hope of having loss leader legislation, any more than this legislation we have in British Columbia was ever used, because it is useless.

And I would close by just quoting your question at the end of your questionnaire, and my answer to it. They are as follows:

Question 5. The need or otherwise for remedies and, if need appears to exist, what remedies might be employed with their probable effects.

And the answer to that is this:

On the assumption that remedial measures are necessary, if only for the reason of fair play, and realizing that the government has a tiger by the tail which they might have difficulty in releasing, it is suggested that the manufacturer and wholesaler be permitted the right to choose their retail outlets, and to be allowed to cancel such agencies without giving cause.

This is an easy and partial way out. The proper and fair way is to rescind the



Price Maintenance Act entirely.

THE CHAIRMAN: As it is now 12.45, and as no doubt there will be some discussion which would take a few moments, perhaps we should adjourn now, to resume after lunch.

--- Luncheon adjournment.



--- Upon resuming at 2.30 p.m.

THE CHAIRMAN: The hearing will resume. As I recall, Mr. Kent had just completed the presentation of his brief and some discussion with respect to it.

Before passing on further I think, Mr. Kent, to the answers which you sent in to the questionnaire which was sent out to you, and which was attached to your brief. Would it be satisfactory procedure if you were to read the questions and answers? There might be some questions asked of you about these matters, and it might be helpful if you were to read the questions and answers. Then we would have it so that everybody would know what we are talking about.

MR. KENT: Do you wish me to read this?

THE CHAIRMAN: Yes, if you will.

MR. KENT: I should like to clarify one point. We are discussing the Canadian Association of Radio and Appliance Dealers, to which we refer as CARAD. For the record, you should know that this is an association which was started some years ago in connection with the Retail Merchants Association of Canada. This CARAD was set up under the Retail Merchants Association of Canada, and we have functioned ever since under this name, as part of the Retail Merchants Association of British Columbia now.

THE CHAIRMAN: It is one of the divisions





of the Retail Merchants Association?

MR. KENT: Yes. While it was at one time a Dominion Association, that has gone by the board; and it is quite likely that in future we may call ourselves the Radio and Appliances Branch of the Retail Merchants Association of British Columbia. I thought I would make that clear in case someone asked about it. We are actually part of the Retail Merchants Association.

Then, turning to this questionnaire, it is as follows:

Answers to Questionnaire on "Loss Leaders" requested by Restrictive Trade Practices Commission and submitted by M. A. Kent on behalf of the local branch of the Canadian Association of Radio & Appliance Dealers of Victoria, B. C.

Question 1 - Specific instances of loss-leadering, in particular articles, or types of merchandise, or localities, and their duration.

Answer - G. E. Kettles, Irons and Polishers and Sunbeam Mixmasters, all of which articles have been sold at a small fraction above cost, and over such a prolonged period that suggested list has no bearing, consequently most dealers refuse to handle, or if they stock will not push or recommend. They will most likely "knock" the article and recommend a different make.

While only a few articles are mentioned, almost every electrical appliance, of every make, has been cut beyond all reasonable



limits over the past two years. There have been few exceptions. They may not be sustained reductions but have been very frequent.

Question 2 - General loss-leadering practices, by particular dealers, or in particular trades or localities, and the frequency and duration thereof.

Answer - The practice has been to "cut" any article, even new models just being introduced, below the price which, in our opinion, it is economical to operate and cover fixed expenses, ride it for a short period, then drop. By this time other dealers have followed suit or refused to handle and consequently the manufacturer has had a sudden spurt of business, then has few sales and faces hostile agents who are not anxious to stock his line.

This practice has not been confined to any particular dealer in Victoria, all have indulged at different times, some as instigators and some in self-defence. From experience, when these dealers get together in a friendly meeting they all decry this practice and claim they act in self-defence. None admit it as sound business or making them any net profit.

Question 3 - Answered in paragraph 2.

Question 4 - The effect of loss-leadering in a particular article upon -



- (a) Sales of that article by the dealer using it as a loss-leader during the loss-leader period and afterwards.

Answer - In our line of business, as distinct from grocery, cigarettes, etc., where the individual demand is practically daily, the probable customers are limited at any one time. An article purchased eliminates that customer for some years, and for this reason there are just so many people each month who are prepared to buy certain articles such as a washer, refrigerator, range, etc.

This market, under conditions existing before the Price Maintenance Act was introduced, would be spread seasonally over a period. People bought when they were ready.

A drastic "cut" in retail price will, naturally, have the effect of prevailing on many people to purchase before they would normally be ready, and in this way the market which would be available in June or July has been pre-sold in January or February. It also encourages credit purchases beyond what would be normal.

There is no doubt an advantage to the dealer who first makes a "cut" on any article. However, when this initial rush is over his sales are bound to fall off due to having supplied the market, or in addition having his price met or bettered



by his opposition.

It is quite likely he would sell in one month what he would normally sell in a year on the articles he chose to "loss leader", but it is contended that his sales on some other article which is "loss leadered" by his opposition will fall off with him in like proportion.

If our profits are considered too high they call for an over-all reduction, not just a partial or spasmodic one.

Question (b) Sales of that article by competing dealers who do not use it as a loss leader during the loss leader period and afterwards.

Answer - Sales of that article fall off during the time it is "cut" - certainly during the loss-leader period, and for the reason stated above, for some time afterwards. If the "cut" is prolonged and very drastic he does not want the business anyway.

Question (c) - Sales of that article by competing dealers who meet the loss-leader price.

Answer - Immediate sales will fall off. Can be regained if price met over a sustained period.

Question (d) - Sales of other merchandise by the dealer who makes use of a loss leader during the loss leader period and





afterwards.

Answer - This has some advantage when applied to articles of relatively low cost, say \$20 to \$50, but in the case of articles from \$100 to \$600 the very fact it is a major expenditure with the average purchaser, means it is not likely they will be very easily induced to purchase more than the article which has been offered as a "bargain".

Question (e) - Sales of other merchandise by competing dealers who do not employ a loss leader during the loss leader period and afterwards.

Answer - Not usually affected.

Question (f) - Sales of other merchandise by competing dealers who meet the loss leader price.

Answer - Not usually affected.

Question (g) - The total sales of that article in the area affected during the loss leader period and afterwards.

Answer - No figures available.

Question (h) - The general sales of products of the manufacturer of that article, in the area affected by one of his products being used as a loss leader.

Answer - This was answered partially in para. 2. The manufacturer of any product which, through no fault of his, is being



consistently kicked around at a price that does not bear its proper share of expense, let alone profit, is bound to be in disfavour with his agencies. They tell us they can't help themselves but we are loath to believe them. They end up with one dealer who gives them volume and a dozen others who are antagonistic. All their eggs are then in one basket, which condition is not to their liking.

Question (1) - The reputation and acceptance of the loss leader article among --

(1) Dealers in that article.

Answer - Answered in (h) above.

Question (2) - The Consuming public

Answer - Very often they will ask what is wrong with the article that calls for its being slashed. It certainly does no good to the reputation of the manufacturer to have his products consistently marked down. It tends to "cheapen" his whole line in the eyes of the public.

Answers from Page 3

Question 1 - What constitutes a "loss leader" and what types of merchandise are commonly used as such?

Answer - In our opinion a "loss leader" is an article, not in overstock or due to business failure, which is consistently sold at a price below the Canadian average cost of doing



business in that particular trade.

Taking the above as a reasonable assumption, almost all articles in the electrical trade, even making allowances for special discounts, have been loss leadered.

Question 2 - The percentage of total sales made on a loss leader basis with respect to:

- (a) A particular article
- (b) Articles of the same class or in the same field of trade e.g., groceries, hardware goods, electrical appliances, drug store products.

Answer - It would take an actuary working over the past year to provide an answer to the above two questions. We will have to pass.

Question 3 - The general effects of loss leadering practices upon -

- (a) Merchandising generally, and upon manufacturers, wholesalers and retailers.

Answer - The word "chaotic" has been used before and we have not been able to find a more appropriate one. There is no stability or goodwill in the trade today and this applies to the retailer, wholesaler and manufacturer. The over-all picture will show no net profits in the retail trade and this can easily be verified through government sources.



The retailer hesitates to stock any more than the barest minimum, what he buys today can be loss leadered tomorrow. The manufacturer is hamstrung in marketing his products in an orderly manner, by a government act which tabs all as public menaces, and singles us out for such treatment while coddling themselves, the farmer and the labourer.

Question (b) - Consumers.

Answer - The consumer has had some advantage no doubt, but it has been a confused advantage in that what "he" buys today might be loss leadered tomorrow. He has been led to believe, through government suggestion, that all manufacturers and retailers are very suspect, and the good will and often more than reasonable service built up by old established firms, has pretty well gone by the board.

Question 4 - The effect of changes in the level of business activity upon the use of loss leaders.

Answer - Not understood.

Question 5 - The need or otherwise for remedies, and, if need appears to exist, what remedies might be employed, with their probable effects.

Answer - On the assumption that remedial measures are necessary, if only for the reason of





fair play, and realizing that the government has a tiger by the tail which they might have difficulty in releasing, it is suggested that the manufacturer and wholesaler be permitted the right to choose their retail outlets, and be allowed to cancel such agencies without giving cause.

This is an easy and partial way out. The proper and fair way is to rescind the Price Maintenance Act entirely.

THE CHAIRMAN: On the last page of these questions and answers, referring to question No. 4 which is as follows: "The effect of changes in the level of business activity upon the use of loss leaders."

That is a question to which you said that you do not understand. You say in your answer that you did not understand the question.

MR. KENT: Which one is that?

THE CHAIRMAN: Question No. 4 on page 4: "The effect of changes in the level of business activity upon the use of loss leaders".

What we want to get at there is ---

MR. KENT: I did not understand the use of the words "the effect of changes."

THE CHAIRMAN: If I might explain what we were after ---

MR. KENT: Had it been, "What changes in the level of business activity has there been upon the use of loss leaders", I could have understood



the use of the words "The effect of changes".

THE CHAIRMAN: What we want to get at is this: if the level of business activity is high, are loss leaders prevalent? If the level of business activity recedes so that there is, you might say, a business slackening off, or you have a minor depression, would loss leaders be used as much as or less than or more than they are used in a period of full employment and high activity. Have you any opinion upon that point?

MR. KENT: Do you mean in a case where times are bad or rather difficult, and sales are slow?

THE CHAIRMAN: Would loss leaders be used less or more than when times are good?

MR. KENT: Well, under ordinary circumstances, before this Act came into force the very fact that business was slow made every merchant go out and, in the ordinary course of business it has always been a fact that has been known to us, that while you have an agency and they have a set price, there has always been enough leeway among ourselves, or with trade-ins, to go out after business, if we were finding it difficult to get it.

We could always give an extra trade-in -- that is, \$100 for an article worth \$50 or \$50 for an article worth \$25. And in that sense it is just the same as cutting the price. We have all been guilty of that.

THE CHAIRMAN: We are not asking whether



it is a matter of guilt, or otherwise. We are just wanting to know whether in your opinion, in hard times, when business is not so easy to get, there will be loss leadership used more frequently or less frequently than in good times, when everybody is able to sell what they have.

MR. KENT: Oh, I should imagine in bad times there would be more of it and, consequently, more failures. You cannot help that.

THE CHAIRMAN: You mean the effect of that would be cumulative, and that there would be more failures than if they had not done that?

MR. KENT: You would have people who are going behind now who would be trying to save themselves by cutting everything. There is no question about that.

THE CHAIRMAN: I just wished to have that one point cleared up, because you said that you did not fully understand what question was intended.

MR. KENT: That is right, I did not understand it.

THE CHAIRMAN: I think you have it now.

MR. GERIN-LAJOLIE: I have a few questions, Mr. Kent. First of all, this general question: would you think that the present legislation forbidding price maintenance would favour stronger competition and hence lower costs to the consumer? I know you have covered some aspects of this question in your brief, but I should like to have an answer to that, if I may.



MR. KENT: I think it probably has, on the over-all picture, without any doubt -- it has resulted in perhaps lower prices to the consumer. But I think it has been at the expense of the businessman. And I think it is a case that a lot of that business, as I say -- in refrigerators, particularly, which were sold last year and the year before at ridiculous prices and with ridiculous trade-ins, \$150 or \$200 for a trade-in which was the same thing practically as cutting prices, that the people who ordinarily would have bought this year have bought last year and the year before, because there is no doubt the sale this year is not what we had expected.

There is a certain amount of over-all business to be had; and my contention is that there is a reasonable profit which a retailer should have. And we have always had violent competition; we have always fought with each other and still have remained friends. But we have done it with some reasonable protection, that what we buy today at least has a list price that they are trying to adhere to.

Many of us have taken cuts in the ordinary way from the list price. But we do not make it a public matter, and advertise.

MR. GERIN-IAJOIE: You say it has been or that it would be at the expense of the businessman. Do you mean that the businessman would make less money or that he would make no money at all?





MR. KENT: I think you will find he would make no profit, no money, no profit. He can go out for volume, and to a certain extent he can get more volume. But put it this way: if you are doing \$200,000 worth of business at a general markup of 30 per cent over-all, and you say, "All right, I will cut my profits by 5 per cent", you are willing to take 25 per cent; you have to do pretty close to between \$75,000 and \$100,000 more business to be just where you were when you were doing \$200,000 worth of business.

If you can go up into the \$500,000 bracket then you probably begin to make a little money. But you are no better off by taking a 5 per cent cut and doing \$300,000 worth than you were when you were getting your regular markup and doing \$200,000 worth.

MR. GERIN-LAJOIE: Do you not think the consumer would be better off?

MR. KENT: I doubt it, because most of us -- well, as I say, we have been in business a long time and we have given service. It has always cost us a lot of money to give that service. You just have to give it nowadays, and I will not say that you soak the people, but you have to give the service which, in other cases, we gave them. Now we cannot afford to do that -- and nobody else can.

MR. GERIN-LAJOIE: Is it the retailer who gives service all the time on the large appliances?



MR. KENT: The retailer gives all the service all the time. The manufacturer gives you the part which may cost 50 cents or a dollar or \$1.50, and you have to spend \$5 to put it in. The retailer has always done that. He has taken guarantees up to five years on major appliances, and he is the one who has had to do that work. At the present time you cannot afford to do it.

MR. GERIN-IAJOIE: In a locality like Victoria, do I understand that the manufacturers do not have any service agencies or service organizations of any kind?

MR. KENT: They take no responsibility at all. They give you a guarantee and, in some cases -- until we get this rectified -- they even put it in their guarantee on television sets that the dealer will make all repairs without charge for ninety days.

Now, that has been changed. The only thing the manufacturer does for a retailer is to give him parts which are defective, and nothing else.

MR. GERIN-IAJOIE: The Commission has been told in other cities like Montreal and Toronto that the manufacturers in some cases gave the service in return for a certain amount of money.

MR. KENT: You are talking about television now, are you?

MR. GERIN-IAJOIE: Yes.



MR. KENT: One of the companies now has set up a service department here and, for a fee of \$50 for a year, they will service your set free. That has not applied to other makes. This is the first time it has ever applied here, and it is only on one make of television.

MR. GERIN-IAJOIE: It has been applied in connection with other appliances in other cities. I was wondering if it was used here.

MR. KENT: No, it is entirely up to the dealer. And mind you, they are getting a fee for that. They are getting \$50 or \$60 to service that appliance. They are not doing that unless it is fairly profitable to them to do it.

MR. GERIN-IAJOIE: Is it as much as \$50 or \$60?

MR. KENT: I believe they get \$56.

MR. FAVREAU: To do what?

MR. KENT: A full year's warranty on a television set, and it is \$56.

THE CHAIRMAN: On any set?

MR. KENT: No, this is the only company that has done it. They have their own set-up. If a purchaser buys a television set from us we can sell him a contract for \$56; and if we thought that we could not handle it we would turn it over to this company and, for \$56 they will service the set for a year. They have to get a good number of them to average it out on a profitable basis. But that company that set it up here are losing money.



I believe they lost \$7,000 or \$8,000 last year through their service department.

THE CHAIRMAN: To be quite clear, in television is there free service supplied for a fixed period of time by the dealer now, in British Columbia, or in Victoria?

MR. KENT: That varies a great deal. We did have an arrangement here -- I guess it was against the law -- when we used to -- I don't think it is in effect now, but I would not like to comment on it. I am only speaking for ourselves; and if the press is here I would not like to have it public ---

THE CHAIRMAN: This is a public hearing, but I do not know whether the press are taking this down or not.

MR. KENT: Well, there is no regulation or agreement among the dealers. My understanding is that once a set is sold ---

THE CHAIRMAN: No, I am not asking if there is any arrangement. I am asking what the practice of the dealers is. Do you, as a dealer, and do the other dealers whom you know, as a regular practice give service free of charge on television sets for a fixed period of time?

MR. KENT: I will put it this way, that so far as we are concerned, and I think I am right, we put a set in the house and try to sell a man, in addition to that, a service charge which would cover him for ninety days.





THE CHAIRMAN: At an additional charge?

MR. KENT: Yes, at an additional charge.

Oh, if he will stand it, there will be a yearly charge. If he does not take either of those, then he is pretty well on his own, we will say, after a week or ten days. Then if there is trouble he has to pay for it.

THE CHAIRMAN: That is the situation with regard to television?

MR. KENT: Yes, so far as I am concerned. I do not know about the others.

THE CHAIRMAN: And that corresponds to what we have been told in other parts of Canada. I think that is peculiar to television. It does not apply to other appliances.

MR. KENT: Yes, it is peculiar to television. I would not mind saying this -- not that you are interested -- but it will go down as the industry which has volumed quicker than any other industry and on which more money has been lost than on any other industry. There are twenty manufacturers in Canada today and there are twenty manufacturers in the United States. They have 150 million and we have only 15 million.

MR. FAVREAU: Before you proceed with your next question, I think Mr. Gerin-Lajoie was referring a moment ago to the case of certain companies engaged in the manufacture of refrigerators and also of washing machines, where we have been told that the retailer buys from the manufacturer



himself, and there are two types of policy or three types of policy which would cover the manufacturer for one, two, three or perhaps five years. And it did appear that the retailer passes that charge over to the buyer or the purchaser so that during the period for which the retailer has contracted with the manufacturer the latter will service the appliance for one, two, three or five years; is that system existing here?

MR. KENT: It applies only to certain makes. They will give us a policy. We have to pay them for it; we have to pay them so that they are guaranteed, so that they will guarantee it, and we will be reimbursed.

MR. FAVREAU: I think it is only on refrigerators and washing machines.

MR. KENT: I think it is washing machines, and only one company that I know of. I am told that it is washing machines and refrigerators, yes.

MR. GERIN-LAJOIE: You refer to the cost of doing business and, particularly at the top of page 2, you refer to the average cost of doing business. Would you mean by that the average cost all over Canada, or in a particular field of business, or in a particular locality, or what?

MR. KENT: You have to relate that to the particular type of business, yes. I think it varies a good deal. I think you have to take the



electrical appliance field by itself to arrive at it. But, in general, by looking at this list I showed you this morning, outside of perhaps food stores they work on a smaller margin -- and these are your own figures. That covers pretty well the field. I am not saying that they are big firms. Some of them are big, and some are not.

THE CHAIRMAN: I understand you are quoting from a statement prepared by the Dominion Bureau of Statistics.

MR. KENT: It is the Dominion Bureau of Statistics own publication, appearing in the Financial Post, but these are D.B.S. figures.

THE CHAIRMAN: I just wanted to have that clear on the record.

MR. KENT: And you can see there -- they do not have it totalled. They have the gross profit as 26, 26, 27, 25, 29, 26.81, 29 and 29. These are gross profits. Then, clothing stores are 24, 30; incorporated companies are 27 and 30; grocery stores, 14 per cent. That is what I mean. That is the only one around that figure. Combination food stores, 14 per cent. And then I have listed all retail stores, outside of food stores, and you can see that their gross profits are between 26, 27 and 30 per cent. That is their gross profit.

I would have to do some addition; but I have given you the figures as to what they made, net. Hardware stores stand at 1.45. You will see



that their cost of doing business is around 25 per cent. That should not be hard to establish. And that is the average for a good many firms.

MR. GERIN-LAJOLIE: You believe that this cost should be <sup>the</sup> same, and is actually the same all over Canada?

MR. KENT: No. I put it this way, Mr. Counsel, that the difference between one company and another company is a matter of probably 2 or 3 per cent, and that is all. It is not a matter of 5 or 10 per cent. There is not that much difference. And if you get down to one firm which does not do very well, whose gross profit is 30 while their cost of doing business is 29, it is too high.

If in the other firm the gross profit is 30 and their cost of business is 25, they are making a fairly reasonable percentage. But there is not that much leeway, of more than 2 or 3 or 4 per cent, to my mind, in any of these businesses.

MR. GERIN-LAJOLIE: The Commission was told in Montreal and Toronto by some retailers in the appliances business that apparently they were able to do a very profitable business with a gross markup of from 15 to 18 per cent.

MR. KENT: How long have they been in business?

4) MR. GERIN-LAJOLIE: I have in mind one particular case, a person who testified in Montreal that he had been in business for twelve years.





MR. KENT: Is he in business where he sells from the packing case? Is he selling just like these discount houses? Is it like that?

MR. GERIN-LAJOIE: He has a store, and he has a small personnel, and the Commission has been told that he has five or six employees. He has been in business for that long. And since the change in the price maintenance legislation he has been able to advertise, of course. I am wondering if that is a surprise to you?

MR. KENT: I do not know; I do not believe it at all -- that he can conscientiously tell us that he can do business on 18 per cent, that is, unless he is not including his own salary. Because these people who quote these figures, D.B.S., in connection with unincorporated companies, do not take into consideration the salaries of the proprietors. And that is important, because the average working man is working for himself and is drawing a salary. If you do not take his salary of perhaps only \$4,000 or \$5,000 a year, it does make a difference of from 5 per cent to 7 per cent in his net profit. And it is only fair to take him into the picture, surely. An incorporated company shows all the people who are in it.

THE CHAIRMAN: What this man actually told us was that prior to 1951 his sales had been comparatively small, perhaps \$50,000 or \$75,000 a year, but that since that time, when this legislation



was passed, he had begun to operate on a markup of 18 per cent or 20 per cent -- I have forgotten just which it was -- and that his sales had jumped two or three or four times, and that this year he was selling approximately half a million dollars worth of goods. He was asked whether he found it profitable to make this change, this cut in the markup he had had previously -- a markup of around 30 per cent -- and he said, and he smiled as he said it, that he found it very profitable to do so.

MR. KENT: I should say, Mr. Chairman, that he must be one of the very few. If he has money enough to run from \$50,000 to a business of half a million dollars, then he must be making more money on his financing. That, I believe, is the case with many. They do not mind how much they get out of it as long as they get the financing charges which in many cases amounts to more profit than the retail business, or the amount that they get from operating their retail business. I cannot see that. Do you say he makes a markup -- or what we call a discount?

THE CHAIRMAN: It is a markup -- from 18 to 20 per cent.

MR. KENT: A markup of from 18 to 20 per cent would be only about 12 per cent of a discount. And you can see that even the food stores cannot do it on that. I do not mean to say that you cannot pick out one person, but I ---



THE CHAIRMAN: This may be an exceptional case, of course.

MR. KENT: I think it is.

THE CHAIRMAN: He did say that he felt he had a lower overhead. He said he had a lower overhead than most people had because he did not have to pay any salesmen's commissions. He did the selling himself.

MR. KENT: But he could not render service. He has to have a service department.

THE CHAIRMAN: He has service. But he said that he sold practically half a million dollars worth himself, and that he had no salesmen to pay. His argument was this,-- and perhaps I should explain it further -- that the standard products of the big electrical companies making electrical appliances, the standards, had become so well known with their advertising and their length of use and the number of satisfied customers, that most buyers now relied upon the name of the company and the reputation of the product, rather than upon the salesman. He said that they did not ask for a great deal of service and that they did not need a very long and complicated sales talk to convince them that it was a good buy. He indicated that apparently he sold fairly quickly on that basis. But he did have service.

MR. KENT: I do not doubt that is a fact. But we pioneered at a time when it took a lot of salesmanship to sell a refrigerator -- the



need of a refrigerator, the need of a washing machine and the need of an electric stove. Today you do not have to take out a volume, like we used to do, and go through it, page by page, and talk about the bacteria count, in connection with selling a refrigerator. People accept that sort of thing.

That is quite true. There is not so much sales effort needed to convince a person that he should have a particular product. But there are other things coming on the market that are probably going to need salesmen to go out and sell them. I do not mean to say that we have reached the ultimate where everything in the electrical field is acceptable to the people. There are lots of things that still have to be sold to them. You still have to have salesmen in the store.

This man says that he has no salesmen; well, surely he cannot stand on the floor all day and take half a million dollars worth of orders -- unless he is running a discount house. And if so, all they do is sell on the floor. You have your own cartage, and you give no guarantee at all. It is just a straight sale for cash.

THE CHAIRMAN: His statement was that he delivered and installed, and that most of the people did not ask for or insist upon service. He said that he had a service department and that if a thing was in such a shape that it was going to





be expensive to fix it up, he just took the machine back and gave another one.

MR. KENT: Mr. Chairman, there is no customer, whether he is a customer for \$5 or \$500, who, if it is not right -- if there is a scratch on it, if there is something goes wrong with it -- will not be right on the phone and will want service and will want that service right away. They do not want to pay for it, and if there is any kind of an argument, and if it is over the guarantee period, you very often have to make some kind of adjustment -- which we always try to do.

As a matter of fact, Mr. Chairman, that seems to be wrong on the face of it; because electrical appliances today such as stoves, refrigerators, washing machines and, most certainly, television sets, have more gadgets on them, and there is far more trouble to be expected on them because of these clocks and things like that, and stoves, than there was in the old days when you could sell twenty or thirty refrigerators and never be called in connection with any of them.

Today they are far more complicated. There are more gadgets. You have to give more service than you did in the old days.

MR. GERIN-LAJOIE: On the second page of your brief you mention, Mr. Kent, that the consumer cannot help but be confused by the various prices quoted on the same article. I suppose you



would not have any evidence of specific instances to support that assertion?

MR. KENT: No, I have not -- except, if I were going out today to buy some article of any kind, a fishing rod or a reel, I would be as confused as anybody else in the sense that I would never know whether I had paid more or less than the next man.

I do not say it is a disadvantage; but I do say the public are confused in that they just do not understand why there is so much cutting in those articles today, why \$150 or \$200 is given for something that is worth nothing. They are suspicious that there is something wrong with the industry.

I am just as confused as anybody. If I wanted to buy anything, I used to know what the price was that everybody was paying. I was quite willing to pay that, so long as I knew that I was getting it as cheaply as anybody else was getting it. But you cannot tell me that anybody today knows that he is getting an article at the cheapest price that it is possible to get it.

MR. GERIN-LAJOIE: Well, I just wanted to know what you meant by this, because you are suggesting there is such confusion.

MR. KENT: I had a man the other day who said he was going to buy a television set from me. He said, "I will get it from you within the next month, but I am a little bit confused." He called



me by my first name, and he said, "I am confused because I see all these ads in the paper, cut prices of \$100 or \$150; I don't know just what they all mean." I said, "They simply mean that if you want to come in and buy something from us, a specific article, a specific one we have a cut on, and want to get rid of, we will give you \$100 or more off. But if you want to buy a standard article which is on the market, you will not get a cut on it." I say they are all confused.

MR. GERIN-LAJOIE: We will say that a person is buying a Phillips television set, or a certain make made by a certain firm. He will just look at the ad as it is shown by the different stores ---

MR. KENT: Yes; but supposing he buys from one concern today at \$299 -- and this happens all the time, I can give you an instance of it -- and he picks up the paper next day -- let me show you something here, because this will point out in a very few minutes just what is going on.

Now, here is an instance of it, right here. You say that if you were a purchaser you would not be confused? Well, here are three ads dated June 18, 1952, July 5, 1952 and June 14, 1952. They are all within one month. You have here a Westinghouse Deluxe Automatic Range at \$269.50. A few days later you have that Westinghouse Electric Range at \$279.50 -- exactly the same range, and on June 14, within a few days, you



have that same range at \$299.50. If you are a customer and you buy this at \$299.50 or \$269.50, you would be slightly confused as to whether somebody perhaps did not buy one at \$259.50.

That is the point I make, and that is what I mean by being confused. If you are thinking of buying a range you would say, "Well, I will just wait, and probably I will get one for \$229.50." This is not a specific case; it just happened to come out that way. But I will say that it is happening all the time.

THE CHAIRMAN: In that particular case, if you had bought at the first price of \$269.50 and discovered later that it was selling at \$279.50 or \$299.50, you would be glad to be confused.

MR. KENT: But how about the other way? How about the person who buys at \$299.50 and a few days later finds that it is being sold at \$269.50?

THE CHAIRMAN: It just happened that the ads you mentioned came out the other way.

MR. KENT: Yes, but it is still confusing. It confuses the man who is merchandising and also it confuses the public.

MR. FAVREAU: With resale price maintenance the same thing has happened, and may happen again quite often. Take a case which is normal, of an article which is price maintained. The suggested price would be, for instance, \$399. Then, suddenly, the company, for reasons of its own, decides to





drop that price by \$50.

MR. KENT: Do you mean the manufacturer?

MR. FAVREAU: Yes. This is reflected in the resale price of all the retailers. All those who have bought at the first suggested price, and who read the new advertisement, might be confused. But you cannot stop that sort of thing.

MR. KENT: That is right; but the point is that there are plenty of those bargains which come out anyway. However at the present time, from the retailer's point of view, unless we have a chance of buying something exclusively, we would not buy ten or twenty of them because the day we buy them and got them on our floor somebody would be liable to cut the price by \$50, and we would be left with them.

27           The manufacturer is always having new articles coming out, seasonally; or they may be overstocked and they will give them to the dealer and say, "We are dropping the price. Take a loss on the ones you have on your floor" -- and you will either reduce your price, the new list price will be so much, or you will give an extra trade-in. The public always had that, but it was what I would call orderly marketing. They could still get a bargain.

MR. FAVREAU: But in that case, what about the persons who have bought?

MR. KENT: They have to take a chance. But that happens with one article perhaps once or



twice a year, not every day. And we can take care of that. In some cases, if it has been very recent, we refund the customer on the price of it. If they do not ask for it, we probably do not. But if they just come in and say, "I bought this only a month ago", we will say, all right, because they are good customers, and we give them a credit. But that is what we call orderly marketing.

Today it is not that way. Before today the public got just as many bargains but they got them at specific times. There were always January sales when things were always marked down. At seasonable times of the year television sets are marked down, because there are new models coming out. That is all seasonal. The manufacturer has more control over it because he can find out what his stocks are on the dealers' floors and he can bring out these reductions at a time which will bring about orderly marketing, as I say.

Do not forget that we have always been able to cut each other's throats on trade-ins.

THE CHAIRMAN: You mean that prices were not fully maintained?

MR. KENT: That is right. There was always this matter of trade-ins.

THE CHAIRMAN: Perhaps you can tell us more on that; is it the advertising of these prices rather than the cutting of the prices you



are concerned about?

MR. KENT: The advertising is the part that does the most damage, most definitely, oh yes. We have never been so honest with each other that we have not cut prices to a person who is most insistent. We do not make a practice of it, but we have all done it. However it was not as public as it is now. Today everybody is looking with suspicion at what you are offering -- suspicion that you are charging them more than the man next door. And maybe you are, I don't know.

MR. GERIN-LAJOLIE: At the bottom of page 2 of your brief, I am wondering if there is some misunderstanding in what you say. In your brief you say that it makes it an offence punishable by crime and imprisonment for businessmen to meet and discuss their various problems, if the matter of price is mentioned. Is it not a fact that that was the situation before the present legislation -- if businessmen were to meet and discuss prices, that it would amount to a combine?

MR. KENT: Do you mean under the present legislation?

MR. GERIN-LAJOLIE: Under the former legislation, under the Criminal Code -- if manufacturers had combined to fix prices.

MR. KENT: Well, under the combines legislation -- but do not tell me that you think --



in previous times we, as businessmen, could get together in our association, but we never did get 100 per cent co-operation and never would. But we could call for certain prices, perhaps on television aerials, you could say that you are going to set \$69 or \$79 for a certain type of aerial. And we would say that 70 per cent of us agreed to it. We could do that, under the old system. I don't think anybody is going to say that we would have a combine if we did that.

MR. GERIN-LAJOIE: I am not so sure about that.

MR. KENT: There is nothing under this, the way I read it. If this association of mine got together and discussed prices, and you got to know about it, or the government got to know about it, we could be fined. I don't know about the imprisonment part of it; but probably we could be. I don't think there is any question about it, that this is far more binding and that there is far more implications, so far as the retailer is concerned.

And who will ever say that there has ever been a combine among retailers? That is the most ridiculous thing I have ever heard. There never could be. I have been with the retailers for thirty years, and you never could get them together.

MR. GERIN-LAJOIE: If I might mention a free opinion, I think that would be a combine.

MR. KENT: It is not a combine unless it





is a monopoly. I do not agree with you -- unless it is almost 100 per cent it cannot be a combine.

THE CHAIRMAN: Well, Mr. Kent, I do not think I would want to go as far out on a limb as that. Because there has been a number of cases in which the court held that combines had existed where a great deal less than 90 per cent of the business was found to be in agreement.

So far as making agreements as to what prices are going to be charged, there is no change in the law in that respect. The only change that has been made in the law is that the manufacturer is not allowed to fix the retail price, and he is not allowed to cut off a dealer because he has failed to adhere to prices which the manufacturer as a supplier names for him. That is about all the change that has taken place.

In so far as agreements are concerned, it might be a good idea if you were to take a look at section 2 of the Combines Investigation Act. You will find it was there before this last change was made, and that there has been no change in it.

MR. KENT: But probably it has brought it more to the fore, on account of this Act. I never realized that we were transgressing the law, if we had an association that talked prices. It has been brought far more to the fore recently.

THE CHAIRMAN: It is not an offence to talk prices, but it is an offence to agree on



prices.

MR. KENT: Well, what are you going to do, if you talk prices? Surely the one goes with the other.

MR. GERIN-LAJOIE: You referred to Mr. Burton's opinion of price maintenance. I would like to venture this question to you: would you conceive it possible that the departmental stores might prefer to have price maintenance so that their own private brands might sell at lower prices than the national brands?

MR. KENT: It is rather odd that you should ask me that question, because someone here suggested the same thing to me. He must have known what was in your mind. It had never crossed my mind that it would be an ulterior motive.

MR. GERIN-LAJOIE: I think that is all I wish to ask.

MR. WHITELEY: To what extent has the number of appliance dealers in the city of Vancouver changed since goods began to move in the post-war period?

MR. KENT: I think the B. C. Electric perhaps keeps track of all that. But I would say there has probably been an increase in the number of people in the business. Is that what you mean?

MR. WHITELEY: Yes. To what extent? Has it been substantial or slight?

MR. KENT: I would say that there has been an increase of probably 10 per cent.



I do not know offhand what it would be. It runs about 110 dealers, I think, in this line of business.

MR. WHITELEY: Do you think there were that many before the war?

MR. KENT: Before the war?

MR. WHITELEY: Yes.

MR. KENT: Yes, I think there would be about that. During the war it went down, and then it came up again. There have always been some getting into it and out of it -- this business.

MR. WHITELEY: In some centres it has been suggested that the increase has been quite large in the post-war period.

MR. KENT: Since the war?

MR. WHITELEY: Since goods began to be available after the war.

MR. KENT: I would think it increased, but not more than 25 or 30 per cent. But we do not mind competition that way. There are always people coming in and out. However looking back over the years I must say there are not many in the business today who were there twenty years ago. And there have been a lot of them come and go since that time.

MR. WHITELEY: In your opinion are there any actual cut-rate houses in this city?

MR. KENT: You mean in all business?

MR. WHITELEY: Yes.

MR. KENT: I think as you define cut-rate



houses, no.

MR. WHITELEY: In these references you have made to cut prices, are you referring to the spasmodic type of price cutting?

MR. KENT: Yes.

MR. WHITELEY: Where one dealer would feature one article for a short period of time and another dealer would feature some other article?

MR. KENT: Yes; but it has been pretty well continued on certain items which are well known. For instance, General Electric has been cut consistently for the past few years.

MR. WHITELEY: On the smaller appliances?

MR. KENT: On their smaller appliances, yes. But the whole line has been cut, especially on something which is in popular demand. For instance, I am thinking of a Mixmaster, which is the most popular mixer. You can sell ten Sunbeam Mixmasters to people without any sales effort, at all. But just try to sell them any other make of mixer, and you have a job on your hands.

The article which is always cut is the one which is in popular demand. Mixmaster could easily have been sold at the regular price -- and that price is not too high as compared with the prices of other things -- but because they are so well known they have been cut drastically in the last two years.

MR. WHITELEY: What situation actually eventuates? Is there a price now on Mixmasters





in the city of Victoria?

MR. KENT: Yes, and there has been, right along.

MR. WHITELEY: What is that price?

MR. KENT: It varies anywhere from probably \$49 up to -- even lower than that ---

THE CHAIRMAN: Then there is no one price?

MR. KENT: No.

MR. FAVREAU: There is one flexible price.

MR. KENT: There is one price on one day and another price on another day. You don't know where you are.

MR. WHITELEY: What situation eventually comes out of it?

MR. KENT: I wouldn't know.

MR. WHITELEY: Well then, the price cutting must be spasmodic.

MR. KENT: If you can call it spasmodic by the fact that they probably do not have the ad in the paper every day, if that is what you mean. But if you go around town to buy a Mixmaster you will probably get ten different prices.

THE CHAIRMAN: And would those all be lower than the suggested list price?

MR. KENT: Oh yes, all of them. For instance, a G. E. kettle which is, I think, listed at \$12.95, is selling anywhere from \$8.95 to \$9.95. That is the kind of case. And either it is done as a leader to bring people into the store, and I don't know whether that is so or not, I don't know



what the reason is. But certainly there is no incentive to sell any of that stuff today.

MR. WHITELEY: What about the major appliances?

MR. KENT: Do you mean such as refrigerators and stoves?

MR. WHITELEY: Yes.

MR. KENT: Well, they are being cut all the time. From our point of view, let us say, in handling a Moffatt or a Westinghouse range, there is a suggested price. But we are apt to pick up the paper tomorrow morning and see that a new range that has been on the market only a month or two is suddenly slashed by someone to the extent of \$50 or \$60. And then there may not be another ad for a month or so.

We have had cases where a brand new washer, a brand new model came out, and before we had our model on the floor it was cut from \$299 to \$259.50, before the public had even been introduced to it.

MR. WHITELEY: Would that price persist?

MR. KENT: No, nobody handled it. We told the fellow we would not take any more, and he did not make any sales until that price died out. Because we did not want to buy it at that price, it was too close to our cost.

MR. WHITELEY: What about the dealer who featured it?

MR. KENT: I don't know what they did.



It was the only time they did it -- just once.

THE CHAIRMAN: Did he go on selling it?

MR. KENT: One dealer does it one time and another dealer is liable to do it another time, because they get mad at each other. And we have done it, too. We have done it -- \$269 was our price. We made 17 per cent on it, and I guess we lost "dough" on that one. We put in a price of \$269, and they sort of forget about it. But everybody is doing it. Everybody has done it.

MR. WHITELEY: In the larger cities in the East the presentation made to the Commission was that certain so-called cut-rate dealers were persistently operating on a narrow margin of perhaps 18 to 20 per cent. I take it from your evidence that that situation does not prevail in Victoria. What you get is a spasmodic situation.

MR. KENT: I mean that here, for instance, as compared with Vancouver, we are a little more gentlemanly. We take life a little easier over here. And if we do compete we do it in a fairly friendly way. But I think you will find in the bigger centres, Vancouver especially, it is worse there than it is here. But we still suffer from it here, too.

MR. WHITELEY: How do you distinguish between a form of selling in which a dealer advertises a cut of \$50 on an item and another form of advertising where he offers an allowance



of \$50 on a mop?

MR. KENT: One is cutting the retail price, which is a great deal different from giving a trade-in, in the mind of the public.

If they are buying a Moffatt range at \$300, they are not so disturbed if there is a trade-in of \$50 or \$75 as they are if, after having bought that model, they find that it comes away down in price or is advertised at \$50 or \$75 less. The retail price that is advertised and is quoted is the part that gives some stability to the trade-in. The trade-in part has always been, in a sense, a method of giving an advantage to the public.

That is so, unless it is a seasonal time when the company reduces its price, or somebody has got overstocked and is quietly giving a cut on it. But it is a fact that there is no established price in the mind of the public on any line of merchandise.

MR. WHITELEY: That is all I wish to ask.

THE CHAIRMAN: Could we get one thing a little clearer, as to exactly what the term "loss leader" means to you. The word "leader" in the expression is quite frequently taken to mean that goods are sold at a loss for the purpose of leading people into a store, probably to buy something else. Would that be your view of the term "loss leader"; or do you think that the mere fact that goods are sold at a price below one which will





pay the cost of the goods, plus the cost of doing business, is loss leadering? What do you mean by that term?

MR. KENT: Mind you, the term "loss leader" is not mine. I think the very name means that it is a loss. It is a leader.

THE CHAIRMAN: There must be a loss somewhere in it?

MR. KENT: There must be a loss to lead people into the store.

THE CHAIRMAN: And if you lead them into the store, are they brought in there to have them buy something else, as a rule?

MR. KENT: Yes, in a good many cases.

THE CHAIRMAN: So that the word "leader" means something more than that it is being sold at a loss?

MR. KENT: Yes. And I think the reason you have not had more response -- and you have not had too much of it -- is because your Commission was set up to look into loss leadering. I am thinking of a very prominent businessman I saw last Tuesday. I had headed our notice as "loss leaders". If I had headed it "price maintenance" he would have been down here like a bird-dog. But we feel there is no legislation that can control loss leaders. It is too hard to define. And it is thought that there is no advantage in coming to this Board, or in answering your questionnaire. Because so far as the questionnaire



is concerned, he did what I did at the beginning, he threw it into the wastepaper basket.

But when it is tied in with price maintenance, then it gives a different interpretation. If you had been a commission which was not going to tie in the two things, loss leaders and price maintenance, I would not have been here to spend so much time, because there is no legislation you can get to deal with loss leaders, as such.

THE CHAIRMAN: We are instructed to look into loss leaders.

MR. KENT: I figure you are going to report to some extent on the price maintenance part in connection with loss leaders, or I hope so, anyway.

THE CHAIRMAN: We have to consider the whole subject of loss leaders and matters related to it, and which bear on the use of loss leaders. They also have to be considered.

One must bear in mind, of course, the fact that the Act relating to resale price maintenance was passed only a couple of years ago. We are trying to see what has happened since the time it was passed; and what we are trying to do particularly is to find out in what fields of business loss leaders, as people in business understand them, are being used. We want to know whether they are being used occasionally and with regard only to a certain number of articles, or whether



in certain particular localities, or whether they are being used generally and persistently. And, if they are being used, we want to find their effects upon business -- retailers, wholesalers and manufacturers -- and upon the public. Because you must keep in mind that the legislation is intended to be used to protect the interests of the public. Therefore a consideration of the public comes into the picture during the course of our inquiry.

It is possible that something which would injure a merchant or group of merchants might also injure the public generally. It might also be possible, on the other hand, that something which would work badly from the point of view of a particular merchant or group of merchants, in its total effect would be beneficial to the public.

We have to look at the whole thing, having in mind the public interest as well as the interests of businessmen.

This matter of the "leader" aspect of loss leadering is of some importance. Because when we look at the question of major appliances the statement has been made, and was made today, that where major appliances are concerned they are not properly used for the purpose of leading people into the store to buy other things, because a person only buys a major article of that kind once in a lifetime. If he comes in to buy a refrigerator or a television set costing \$200 or \$300 or \$400,



it will not be easy to get him to spend another \$300 or \$400 on something else.

The purpose of that sale may be to get him in to buy that article. But, conceivably, it might be to get him in, not to buy that article, but to persuade him to buy something else. So that the "leader" aspect of that phrase does enter into the picture considerably.

The mere fact that something might be sold at a loss does not necessarily make it a loss leader. As you know, there are certain circumstances under which merchants on occasions may be forced to sell at a loss. That may happen at the end of a season where the demand has run out for a particular sort of thing. At the end of the season a merchant may wish to clear his shelves for the next year.

The same is true with respect to articles which deteriorate fairly rapidly. You cannot keep them on your shelves indefinitely. You might have to sell them at a loss. Nobody in business would call them loss leaders.

And there may be other reasons why, in a particular case, a merchant may sell at a loss to him, but it is not properly speaking a loss leader, in the sense that businessmen usually use that term -- even though they may vary as to what the exact meaning may be.

I am just trying to get from you what you mean by a loss leader, and what effect it would





have on your business, so far as major appliances are concerned.

MR. KENT: Was this committee set up -- how long ago was it set up?

THE CHAIRMAN: This Commission?

MR. KENT: Was it since the Price Maintenance Act came in?

THE CHAIRMAN: This Commission was established by amendments to the Combines Investigation Act in the year following the abolition of resale price maintenance. And one of the things which, so to speak, was deposited on our doorstep as a result of the MacQuarrie committee report -- and it was the MacQuarrie committee report which led to the abolition of resale price maintenance -- was the study of the question of loss leaders.

At the time the MacQuarrie committee was carrying on its inquiry, representations were made to it that the abolition of resale price maintenance would result in the wholesale use of loss leaders. But the committee, in its report, expressed the opinion that loss leaders were not a serious problem at that time, that being a period of high employment and productivity and, what you might call, a sellers' market.

The committee estimated that if there were troubles of that kind to be anticipated, there would be time to investigate them subsequently.

One of the first duties which fell upon



this Commission was to carry out or to complete an investigation into that field. That is what we are doing now.

MR. KENT: I am positive that because you were known to be inquiring into the loss leader end of it, without tying in price maintenance -- I am positive it has had an effect upon the replies you have not received from businessmen. Because I do not think there is any solution for loss leadering -- for an Act which would enforce anything to do with loss leadering.

Since price maintenance has come in, we know that manufacturers at one time had some control down the line, through their agencies, which were established. We have been agents for R.C.A. Victor for forty years, ever since they started. And they have had some control over their article, until it was sold.

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When they lost that control in this and in other lines, too, it has meant that what you might call loss leadering has not been confined to certain foodstuffs, or certain things like that. It has become general. There is no such thing as loss leadering now; everything is loss leadered at some time.

THE CHAIRMAN: Of course it is always true that there may be a close connection between resale price maintenance and loss leaders. That is one of the aspects of the problem which we have to consider. We have never said that resale



price maintenance was entirely outside the scope of the inquiry.

MR. KENT: I hope it is not.

THE CHAIRMAN: We have always had very keenly in mind the fact that many businessmen thought that it had a very close connection. And it was necessary for us to take that into account carefully in dealing with it.

There is one further question I might ask. Is it the opinion of your association, or your personal opinion, that resale price maintenance would be a cure for the cutting of prices about which you are complaining?

MR. KENT: Very very definitely, yes; because, as I say, the person who builds the article is competing at his end, and he should have at least some control over his agencies. If he establishes four or five stores and knows that he has set certain prices on his article he should know that it would be sold at that price.

THE CHAIRMAN: What about trade-ins, from time to time?

MR. KENT: He did not take any interest in trade-ins. We could always compete on that level.

THE CHAIRMAN: Does that not have some effect<sup>on</sup>/prices and failing to maintain them?

MR. KENT: Yes. And the manufacturer may come in some time, if we have a store that is going crazy on trade-ins, or going a little crazier



than usual. The manufacturer would probably say, "You are no longer an agent of mine." He might say that, if that agent was upsetting four or five other dealers. The manufacturer would have some control by saying, "You are my agent, and if I do not like your store I can stop you tomorrow and take my stock out. You are no longer my agent." But he could not do that today without making himself liable to prosecution.

THE CHAIRMAN: Are you familiar with the present position of the law in the United States?

MR. KENT: No, I am not.

THE CHAIRMAN: Where they have fair trade laws in all but three of the states, and the District of Columbia.

MR. KENT: I never have studied them.

THE CHAIRMAN: You are not familiar with the way it operates?

MR. KENT: No. I think myself that the part which would obviate our troubles here -- at least my troubles -- would be just that the wholesaler, the manufacturer and the distributor would have the privilege of suggesting a list price. That is all right. And if he did not like the firm, or if he did not like my firm, then for no reason that he would have to explain he would be able to say, "You are no longer an agent of ours; you are finished."

THE CHAIRMAN: There is one reason he would have to explain now.





MR. KENT: The one reason he has to explain is as to why he cut them off.

THE CHAIRMAN: He would have to explain if he cut them off because of price.

MR. KENT: Yes.

THE CHAIRMAN: He could cut them off for any other reason.

MR. KENT: But it is not as easy to establish as that. They still could cut them off, but they are liable for a lawsuit, because a man could say, "You cut me off because I cut prices." It is not as easy today.

THE CHAIRMAN: You mean if he has been cutting prices, and you cut him off, he may be able to persuade the court that the real reason was because he was cutting prices?

MR. KENT: Yes. It requires a lawsuit. Before I can cut off the wholesaler, or throw out his line, or he can cut me off for no reason at all -- just send me thirty days notice.

THE CHAIRMAN: You think that is a good position for the retailer to be in?

MR. KENT: Yes, I do. Their franchise has some value, surely. It has been built up to have some value through their advertising over twenty or thirty years, through their publicity. And they have established a name for themselves which surely is worth something. They want orderly marketing of their goods.

THE CHAIRMAN: Just before we close,



is there anything further you would like to ask?

MR. KENT: No, I think I have said everything I wish to say.

THE CHAIRMAN: Do you wish to say anything, Mr. Duck?

MR. DUCK: No, the company I represent has already presented its views to you on this subject, particularly in connection with small appliances.

I think anything I would add at this time would be superfluous.

THE CHAIRMAN: Do you wish to say anything, Mr. Pierce?

MR. PIERCE: No. The only thing I might wish to add would be this, that counsel was referring to the fact that the general public seems to be mixed up in connection with the prices which they are getting today. I might say that the general public are in the same position we are, ourselves. We are just as much mixed up as to what the price of an article is going to be. We might leave this room today and go back to our stores and find that an article has dropped \$50 in price. We are no wiser than the public. So if it is good for the public it must be good for us too.

THE CHAIRMAN: Your position might be a little different from that of the public. You have got the goods.

MR. PIERCE: We have the goods, and we are going to sell it to them at this price, if we



can.

THE CHAIRMAN: Then, I think that will conclude the hearing in Victoria. We will now adjourn to Vancouver, where the hearing will be continued on Monday morning at ten o'clock.

---Whereupon the hearing at Victoria was concluded, to be resumed in Vancouver, British Columbia, Monday, July 5, 1954.









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